TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907

No. [redacted]. 103.

THE J. J. McCASKILL COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED MARCH 17, 1908.

(21,073.)

(21,073.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 670.

THE J. J. McCASKILL COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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And afterwards, to-wit: on the 8th day of December, A. D. 1906, was filed with the Clerk of said Court the appeal bond of the said The J. J. McCaskill Company, which is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT, NORTHERN DISTRICT OF FLORIDA.

THE J. J. McCASKILL COMPANY, A CORPORATION,
Appellee,

vs.

UNITED STATES OF AMERICA,
Appellant.

Know all men by these presents, that we, The J. J. McCaskill Company, a corporation, as principal, and Geo. W. Ward and Lee Daniel as sureties, are held and firmly bound unto Theodore Roosevelt, President of the United States, and his successors in office, in the sum of two hundred and fifty ($250.) dollars, for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents

Signed and sealed this 3 day of December, A. D. 1906.

The condition of this obligation is such that, whereas, the said principal obliger is prosecuting an appeal to the Circuit Court of Appeals of the United States for the Fifth Judicial Circuit, at New Orleans, to reverse the decree rendered by the said Circuit Court in the case of the United States vs. The J. J. McCaskill Company, on the 6th day of June, A. D. 1906.

Now, therefore, if the principal obliger shall prosecute said appeal to effect, and answer all damage and cost if it fail to make said appeal good, then this obligation shall be void; otherwise to remain in full force and effect.

[Seal] THE J. J. McCASKILL CO.
By J. J. McCASKILL, Pres.
[Seal] GEO. W. WARD.
[Seal] LEE DANIELL.

Approved this 8th day of December, A. D. 1906.
CHAS. SWAYNE,
Circuit Judge.

Indorsed: The J. J. McCaskill Company, a corporation,

appellee, vs. United States of America, appellant. Appeal bond. Filed December 8, 1906. F. W. Marsh, Clerk. Maxwell & Reeves, Law Offices, Pensacola, Fla.

United States of America,
Northern District of Florida.

I, F. W. Marsh, Clerk of the Circuit Court of the United States in and for the Northern District of Florida, and the Fifth Judicial Circuit, hereby certify that the foregoing, being copy of the appeal bond in said cause, is part of the transcript of record in said cause.

In testimony whereof, I have hereunto set my hand and the seal of said Court, at the City of Pensacola, in said District, this 8th day of December, A. D. 1906.

[Seal] F. W. MARSH.

In the Circuit Court of Appeals of the Fifth Judicial Circuit of the United States, at New Orleans.

The J. J. McCaskill Company, Appellant,
vs.
United States of America, Appellee.

In the above case, it is stipulated and agreed by the parties thereto that the following mentioned documents copied into the transcript of the record filed in said Court were not offered nor introduced in evidence in said cause, and are not a part of the record thereof, and shall be stricken from said transcript of record, to-wit:

Affidavit of George W. Miller, taken before Antoine Paul, dated December 21st, 1904.

Affidavit made as aforesaid by T. Y. Watts, dated December 23rd, 1904.

Affidavit made as aforesaid by Charles Ward, dated December 20th, 1904.

Affidavit made as aforesaid by J. N. Blackman, dated December 20th, 1904.

Fraudulent report of Antoine Paul, dated December 31st, 1904, to which these affidavits were attached.

It is further stipulated and agreed that Exhibit "A" attached to this stipulation is a true and correct copy of the bond filed in

said cause, and that it shall become a part of the transcript of said record.

I. C. MAXWELL and
S. J. REEVES,
Attorneys for Appellant.
WM. B. SHEPPARD,
Attorney for Appellee.

[Indorsed:] No. 1624. The J. J. McCaskill Company, Appellant, vs. United States of America, Appellee. Stipulation of counsel. Filed 10 day of Dec., 1906. Charles H. Lednum, Clerk of the United States Circuit Court of Appeals. Maxwell & Reeves, Law Offices, Pensacola, Fla.

United States of America,
Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday of November, 1907, at New Orleans, Louisiana, before the Honorable Don A. Pardee, the Honorable A. P. McCormick and the Honorable David D. Shelby, Circuit Judges.

THE J. J. McCASKILL COMPANY,
Appellant,
vs. No. 1624.

THE UNITED STATES,
Appellee.

Be It Remembered, That heretofore, to-wit: on the 4th day of December, 1906, a transcript of the record of the above styled cause from the Circuit Court of the United States for the Northern District of Florida was filed in the office of the clerk of said United States Circuit Court of Appeals for the Fifth Circuit, except as to the appeal bond and the several papers named in the stipulation copied at page 2 hereof, in the words and figures following, to-wit:

1.

That on the 1st day of January, A. D. 1903, and long prior to that time, the north one-half (N. 1/2) of the north-east quarter (N. E. 1/4), south-west quarter (S. W. 1/4) of the north-east quarter (N. E. 1/4), and the south-east quarter (S. E. 1/4) of the north-west quarter (N. W. 1/4) of Section eight (8), in Township one (1), north of Range seventeen (17) west, situated, lying and being in the County of Walton and State of Florida, was vacant public lands of the United States, subject to homestead entry by citizens of the United States possessing the requisite qualifications, upon due compliance with the provisions of the homestead laws of the United States.

2

2.

That on the eighteenth day of September, A. D. 1900, William Josiah Ward filed his application in the General Land Office at Gainesville, Florida, for a homestead on the following described public lands in the County of Walton and State of Florida, to-wit: the north one-half (N. 1/2) of the north-east quarter (N. E. 1/4), south-west quarter (S. W. 1/4) of the north-east quarter (N. E. 1/4), and south-east quarter (S. E. 1/4) of north-west quarter (N. W. 1/4) of Section eight (8), Township one (1), north of Range seventeen (17) west, being about one hundred and sixty (160) acres, known and designated as homestead entry No. 30230.

3

That thereafter in due course the said William Josiah Ward commuted his said homestead entry by availing himself of the laws for the commutation of homestead entries, by paying the Government price therefor, and proof of settlement, cultivation and improvement for the required period of time in compliance with the statutes in such cases made and provided, and for which cash entry certificate No. 18026, issued to the said Ward, January 13th, 1903, and on which a patent for said land issued to him June 3rd, 1903.

4.

Your orator shows unto your Honor that the said William Josiah Ward, in the commutation proof taken on the 29th day of December, 1902, alleged himself, and made it appear by the

testimony of others, that he had established a residence upon said land on March 10th, 1901, and that he continuously resided thereon from that date until and up to the date of submission of final proof, except for absences on two or three occasions of not exceeding three months, due to the illness of his wife; that he had improved the tract by erection of a house thereon and by cultivating one-half acre for two seasons, and the whole amount of improvements being alleged to be of the value of forty ($40.00) dollars, and that he had complied with the law entitling him to a patent to said lands.

5.

Your orator further shows unto the Court that the statement of the said Ward and the proof presented by him on the hearing for final proof, was false, fraudulent and untrue; that he did not have the improvements that he alleged that he had on said premises, and had not cultivated the said land; that the improvements accomplished on said entry consisted
3 of nothing more than a pine pole cabin, never completed, without floor, door or chimney; that there was absolutely no means of entrance or exit thereto or therefrom, unless through the unenclosed gable ends of said cabin; that the interstices between the poles of said cabin were never closed in any fashion; that the only ground on said entry which have (had) undergone cultivation was a space within in [an] enclosure of thirty by thirty-five feet; that the said Ward never resided upon said land, but during the period allowed for residence on the homestead entry, entryman actually resided at his home, where for a long time he had maintained his residence, three and one-half miles distant from said entry.

6.

Your orator further shows that the land embraced in said patent had been conveyed by the said William Josiah Ward to the defendant; that the defendant, through the agency of one Warren Ward, a son of the entryman, and an employee of defendant company, advanced the commutation purchase money for said land and the further sum of one hundred dollars ($100.00), by it to be paid to the said William Josiah Ward as a consideration for the sale and conveyance of said land by him to the defendant. That defendant well knew when it advanced the commutation price for said entry, and took over said land by deed from said Ward, that he, William Josiah

Ward, had not resided upon the land; that he had not cultivated any of said land, and had not made the improvements falsely alleged by him to have been made; that the defendant well knew the character of residence, cultivation and improvement made by the said Ward on said land, and that the pretended improvements were a palpable fraud, and the testimony establishing the claim false and perjured, and is [in] no wise entitled to the consideration which a bona fide purchaser might claim.

For as much, therefore, as the complainant is without remedy in the premises, save in a Court of Equity, and to the end that the said defendant, the J. J. McCaskill Company, a corporation, may make true and full answer of all and singular the things charged herein, not under oath, the same being hereby waived, and that this Honorable Court may decree and adjudge that the patent purporting to convey title to said described lands may be set aside and cancelled and declared null and void, and that the mense [mesne] conveyance from the said patentee, William Josiah Ward and his wife, to
4 the said J. J. McCaskill Company, defendant herein, may be set aside, cancelled and declared null and void.

And that the complainant may have such other and further relief in the premises as equity may require and as to the Court may seem meet.

And may it please your Honor that the writ of subpoena in chancery may issue, directed to the defendant, the J. J. McCaskill Company, a corporation, commanding it on a day certain to be and appear and make answer hereto in accordance with the statutes and the rules of this Honorable Court.

WM. B. SHEPPARD,
United States Attorney.

Pensacola, Fla., August 21st, 1905.

Indorsed: In United States Circuit Court, Northern District of Florida. The United States vs. The J. J. McCaskill Company, a corporation. Bill of complaint. William B. Sheppard, U. S. Attorney. Filed Aug. 22, 1905. F. W. Marsh, Clerk.

* * * * * * * *

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6 ~~And afterwards to wit: upon the 28th day of December, A. D. 1905, came the defendant, by its solic-~~

And afterwards, to-wit: upon the same day, to-wit: the 22nd day of August, A. D. 1905, there was filed in the office of the clerk of said Court a praecipe for subpoena to the defendant, the J. J. McCaskill Company, which praecipe is in the words and figures following, to-wit:

PRAECIPE.

United States Circuit Court, Northern District of Florida.

United States of America
vs. In Chancery.
The J. J. McCaskill Company, a Corporation Operated by the Laws of Florida.

F. W. Marsh, clerk of said Court, you will subpoena to the defendant in the above styled cause, returnable to rule day in October next, 1905.

WM. B. SHEPPARD,
United States Attorney, Northern District of Florida.

(Indorsed:) United States Circuit Court, The United States vs. The J. J. McCaskill Co., a corporation under the laws of Florida. Praecipe. Wm. B. Sheppard, U. S. Attorney. Filed Aug. 22, 1905. F. W. Marsh, Clerk.

And afterwards, to-wit: upon the same day, to-wit: the 22nd day of August, A. D. 1905, there issued out of the clerk's office of said Court a subpoena directed to the said defendant, which subpoena, together with the marshal's return, is in the words and figures following, to-wit:

United States of America,
Northern District of Florida.

The President of the United States of America

To The J. J. McCaskill Company, a corporation, created and existing under the laws of the State of Florida, and having its principal place of business in the County of Walton in the said Northern District of Florida:

We command you, and every of you, that you appear before the Judges of the Circuit Court of the United States of America, for the Fifth Circuit and Northern District of Florida, at Pensacola, in said district, on the first Monday, being the 2nd day of October, A. D. 1905, to answer to a bill of complaint exhibited against you by The United States of America, and filed in the clerk's office of said Court, and then and there to receive and abide by such judgment and decree as

said Court shall have considered in this behalf. And this you are not to omit upon pain of judgment by default being pronounced against you.

To the marshal of the United States to execute and return.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States and the seal of this Court, at the City of Pensacola, in the said district, this 22nd day of August, A. D. 1905.

F. W. MARSH, Clerk.
By A. G. CHIPLEY, D. C

[Seal]

WM. B. SHEPPARD,
U. S. Attorney, Solicitor for Compl't.

Memorandum.

The above named defendant is notified that unless it shall enter its appearance in the clerk's office of said Court, at Pensacola aforesaid, on or before the day to which the above is returnable, the complaint will be taken against it as confessed and a decree entered accordingly.

F. W. MARSH, Clerk.
By A. G. CHIPLEY, D. C.

(Indorsed:) Civ. 513. No. .. Circuit Court United States, Northern District of Florida. The United States of America vs. The J. J. McCaskill Company, a corporation. Chancery Subpoena, Returnable to Rule Day, First Monday in October, A. D. 1905. F. W. Marsh, Clerk. By A. G. Chipley, D. C. Wm. B. Sheppard, U. S. Atty., Complainant's Solicitor.

(Further indorsed:) Marshal's Return. Received this within subpoena on the 25th day of August, 1905, at Bonifay, Florida, and executed the same by calling at the place of business of the within named corporation at Freeport, Florida, and by then and there ascertaining that the president and vice president were neither there, and by then and there informing R. E. L. McCaskill, the secretary and treasurer of said corporation, of the contents of the within subpoena and by then and there at Freeport, Florida, on the 9th day of Sept., 1905, delivering him a true copy hereof. T. F. McGourin, U. S. Marshal. Per J. D. Crews, Deputy. Filed Sep. 23, 1905. F. W. Marsh, Clerk.

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6 And afterwards, to-wit: upon the 28th day of December, A. D. 1905, came the defendant, by its solic-

itor, and filed in the office of the Cleerk of said Court its answer to the said bill of complaint, which answer is in the words and figures following, to-wit:

THE ANSWER OF THE J. J. McCASKILL COMPANY, A CORPORATION, THE DEFENDANT, TO THE BILL OF COMPLAINT OF THE UNITED STATES OF AMERICA, PLAINTIFF.

In the United States Circuit Court, Northern District of Florida, Western Division, at Pensacola. In Chancery.

This defendant, now and at all times hereafter saving to iself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering, says:

That the first, second and third paragraphs of said bill it believes to be true. In answer to the fourth paragraph of said bill, defendant says that he believes it to be true that the said William Josiah Ward made due and proper proof before the proper officers of the Land Department of the United States as to his right to commute the homestead entry in said bill mentioned, but as to whether the proof was as to the fact alleged in said paragraph four, this respondent is not advised.

To the fifth paragraph of said answer, the defendant says that he has no knowledge of the facts therein alleged, and therefore denies that they are true and demands strict proof of the same.

7 To the sixth paragraph of said bill, the respondent says that it is true that after the said William Josiah Ward had obtained from the United States a patent to the land in the said bill of complaint described, on the 3rd day of June, 1903, that it, the said defendant, on the —— day of September, 1903, purchased the said property from the said Ward, and received from him on said —— day of September a deed to the said premises; that the said purchase was made by this defendant in good faith for the above named consideration, without any knowledge or notice of any kind whatever of any irregularity or fraudulent conduct on the part of the said Ward in entering or commuting the said land in the Land Office of the United States, if such irregularity or fraud there was, and that it is a bona fide purchase of the said premises for value and without notice.

The defendant further says said plaintiff had not by its said bill made or stated such a case as entitles it to any equitable relief against this defendant, and prays the same advantage thereof as if it had demurred to the said bill.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause or thing in the said plaintiff's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

MAXWELL & REEVES,
Solicitors for Defendant.
THE J. J. McCASKILL CO.,
By J. J. McCASKILL, President,
Deft.

Indorsed: United States of America vs. J. J. McCaskill Company. Answer. Maxwell & Reeves, Law Offices, Pensacola, Fla. Filed Dec. 28, 1905. F. W. Marsh, Clerk.

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8 And afterwards, to-wit: upon the 1st day of January, A. D. 1906, was filed in the office of the Clerk of said Court the replication of the United States to the answer of the defendant in said cause, which replication is in the words and figures following, to-wit:

THE REPLICATION OF THE UNITED STATES TO THE ANSWER OF THE ABOVE NAMED DEFENDANT.

In the Circuit Court of the United States, Northern District of Florida.

The United States of America
vs.
The J. J. McCaskill Company, a Corporation under the Laws of Florida.

This repliant, saving and reserving unto itself, now and at

all times hereafter, all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that it will aver, maintain and prove its said bill of complaint to be true, certain and sufficient in law, and that said answer of said defendants is uncertain, untrue and insufficient to be replied to by the repliant. Without this, that any other matter or thing whatsoever in said answer contained, material or effectual in law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All of which matters and things this repliant is ready to maintain and prove as this Honorable Court shall direct, and humbly prays as in and by its bill it has heretofore prayed.

WM. B. SHEPPARD,
United States Attorney.

Indorsed: The United States Court, Northern District of Florida. The United States of America vs. The J. J. McCaskill Co. Replication. Wm. B. Sheppard, United States Attorney. Filed Jan. 1, 1906. F. W. Marsh, Clerk.

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9 And afterwards, to-wit: on the 2nd day of March, A. D. 1906, the Judge of said Court made and caused to be entered of record the following order, which is in the words and figures following, to-wit:

United States Circuit Court, Northern District of Florida.

United States of America
vs.
The J. J. McCaskill Co. In Chancery.

Comes now William B. Sheppard, United States Attorney for the Northern District of Florida, and represents to the Court that the issues in the above entitled cause in equity, pending in this Court, or made up by the replication of the United States filed therein, on the —— day of ——, 1906; whereupon the plaintiff, by its said attorney, moves the Court for the appointment of an examiner to take the testimony and report same to said Court.

WM. B. SHEPPARD,
United States Attorney.

ORDER APPOINTING EXAMINER.

Upon reading and considering the foregoing motion for the appointment of a special examiner herein, and it appearing to the Court that the said cause is at issue, it is ordered, adjudged and decreed that F. W. Marsh, Esq., on account of his experience in such matters, be and he is hereby appointed a special examiner in said cause, and shall take the testimony in behalf of both complainant and defendant, at such time as may be convenient to the parties. Said testimony shall be given orally by the witnesses and be taken down by a stenographer, and thereafter reduced to typewriting, and when subscribed by the witnesses and duly certified, the same to be admitted in evidence.

Done and ordered at chambers at Pensacola, this 2nd day of March, A. D. 1906.

CHAS. SWAYNE, Judge.

Indorsed: United States of America vs. The J. J. McCaskill Co., a corporation. Order appointing examiner. Filed at 11 o'clock A. M., Mar. 2, 1906. F. W. Marsh, Clerk.

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10 And afterwards, to-wit: upon the 6th day of April, A. D. 1906, the following testimony was duly given in the cause, which testimony was taken down in shorthand and reduced to long-hand, and filed upon the 11th day of April, A. D. 1906, in the office of the Clerk of said Court.

In the Circuit Court of the United States for the Northern District of Florida.

The United States
vs.
The J. J. McCaskill Company, a Corporation.

Be it remembered, that on the 6th day of April, A. D. 1906, before me, F. W. Marsh, appointed Special Examiner in the said cause, personally appeared certain witnesses, to-wit: Warren A Ward, Josiah Ward, John G. Ward and Antoine Paul, for the plaintiff; and J. J. McCaskill for the defendant, to testify and give evidence in the above entitled cause: and all parties in interest being represented by their respective attorneys, to-wit: William

B. Sheppard, District Attorney, for the United States, and Judge E. C. Maxwell for the corporation, the following testimony was taken on the part of the plaintiff and defendant, it being agreed between counsel that further testimony could be offered, if desired. Before given [giving] testimony, the witnesses were first sworn according to law.

Q. Will you state your name, age and place of residence?
A. WARREN A. WARD; Freeport, Florida.
Q. You are over twenty-one years of age?
A. Yes, sir.
Q. Did you live at Freeport, or about there, in 1903, and prior to that time?
A. Twelve miles east of Freeport.
Q. Do you know the J. J. McCaskill Company?
A. Yes, sir.
Q. Where is that Company doing business, and located?
A. At Freeport.

11 Q. Who is the president of the J. J. McCaskill Company?
A. I think Mr. J. J. McCaskill.
Q. Do you know who was in 1903?
A. I do not think the company was incorporated at that time.
Q. It was a partnership in 1903?
A. That is the way I understood it.
Q. State, if you know, who composed that company when it was a partnership?
A. J. J. McCaskill and his son is all that I know.
Q. State the name of the son?
A. R. E. L. McCaskill.
Q. Do you know Josiah Ward?
A. Yes, sir.
Q. Where did he live about 1903?
A. He lived in Walton County.
Q. Can you name the post-office, or near what place, or store, or any definite place, so you can locate it more definitely than that?
A. Why, he lived about 15 or 16 miles northeast of Freeport, and on the Choctawhatchee River.

By Judge Maxwell:
Q. 16 miles from Freeport?
A. Yes, sir.

Mr. Sheppard, continuing:

Q. Northeast, you say?

A. Yes, sir; I think that is the direction.

Q. Do you know where your father's homestead was that he made application for, his homestead entry, in 1903?

A. Yes, sir.

Q. Can you describe that by numbers?

A. I do not know that I do know the numbers. I can describe the section and township and range, but I do not know that I can call them off.

Q. Describe the section, township and range?

A. Section 8, Township 1, North of Range 17 West.

Q. Do you know when your father made his com-
12 mutation proof in completing his entry to that homestead?

A. No, sir; I do not remember the date. I could not give the exact date.

Q. Can you give me the year and month?

A. I do not know that I can give you the month.

Q. Do you remember what year?

A. No, sir; I cannot be positive. It has been something like three or four years, possibly five. I cannot give you the date exactly.

Q. Were you employed at that time by the McCaskill partnership, or company, as it may have been?

A. Yes, sir.

Q. What was the scope of your employment? What was your relation to the company? What did you do for them?

A. I superintended the cypress business; estimated some timber, and surveyed some.

Q. Were you instructed by the McCaskill Company, or by J. J. McCaskill, to make the purchase, or to negotiate for the homestead of Josiah Ward? What did you do, if anything, for the McCaskill Company or J. J. McCaskill, in relation to this homestead of Josiah Ward's?

A. I took the deed when he sold it.

Q. You did what?

A. I took the deed for it when they bought it from my father.

Q. What did you pay Josiah Ward for it?

A. My recollection is that at the time I took the deed I agreed to pay him one hundred, or possibly one hundred and twenty-five dollars. I would not be positive just the amount of money I gave him.

Q. Whose money was it that you paid Ward?

A. It was Mr. McCaskill's money.

Q. Now, Mr. Ward, you were instructed by Mr. McCaskill to pay him the one hundred dollars, and take your father's deed for the land?

A. Was I instructed by Mr. McCaskill? Yes, sir; there was a trade.

Q. Please tell us what that trade was, as you understood it?

By Judge Maxwell:

That is, if you know of your own knowledge.

13 Mr. Sheppard, continuing:

Q. Let me ask you a few preliminary questions to what you are going to state. Was that trade for the land through you between McCaskill and your father?

A. Yes, sir.

Q. Now, proceed to tell what you understood the trade to be, the terms of that trade?

A. I understood that—my father understood that if he would take up the land, and realize one hundred dollars after buying it in, that he would just take it up. I submitted this proposition.

Q. To whom?

A. To McCaskill & Company.

Q. Was anything said by your father as to what he would be satisfied with, what net price?

Q. [A.] My recollection is that he would take it up if he could realize one hundred dollars after buying it in.

Q. The McCaskill Company accepted that proposition?

A. Yes, sir.

Q. Were you acquainted with this homestead at this time, the place where your father had entered?

A. Yes, sir; I know the land.

Q. What was the character of the improvements? The nature of the house and fences, or inclosure, and the cultivation at that time?

A. There was a small house, something like twelve by twenty feet.

Q. How much inclosure?

A. My recollection is a small place, some thirty, forty or sixty feet inclosed.

Q. What sort of a fence?

A. It was a rail fence, made of rails, out of timber.

Q. Do you know whether anybody lived in that house or shanty at that time?

A. No, sir.

Q. Where was your father living at that time?

A. He lived about two miles east of this homestead.

Q. How often were you there or about that homestead during the time or the year that this negotiation was made between Josiah Ward and J. J. McCaskill?

A. Well, I was not there very often, possibly two or three times a year. I would not be certain that I passed
14 there that many times.

Q. You were working around in the woods, were you not?

A. I was working in the woods, but not particularly at that place.

Q. You could not say how many times you had occasion to pass there going to and fro to Freeport and to other places?

A. No, sir; I could not state how many times I passed.

Q. Did you ever see anything growing or cultivated on that place?

A. Yes, sir; I saw some pea vines in that patch.

Q. Was anybody living in the house at that time?

A. The farm is not at the house.

Q. Was anybody living in the house?

A. I did not pass the house. In fact, the road is a quarter to a half a mile away. The farm was near the trail, and the roadway which I had occasion to travel at times.

Q. How far was the house?

A. I think it was about a quarter of a mile.

Q. Do you know when your father made his final proof, or his commutation?

A. Well, I believe the time he—I could not give the dates.

Q. Was it about the time that you took the deed to this homestead?

A. Some time before I took the deed.

Q. Well, how long?

A. I do not remember; possibly thirty or sixty days; something like that.

Q. Were you at De Funiak the day this final proof was taken?

A. No, sir.

Q. Do you know who paid the commutation fees?

By Judge Maxwell:

Of your own knowledge.

A. No, sir; I do not know of my own knowledge. I did not see any one pay it.

Mr. Sheppard, continuing:

Q. In any conversation with J. J. McCaskill, or with any member of the company, or of the corporation of J. J. McCaskill, have you heard them state whether or not they paid it?

A. No, sir; I have not.

Q. Were you instructed, or did you, at the re-
15 quest or order or direction of the McCaskill Company, buy any other homestead entry at this time from any other party?

(Objected to by solicitor for defendant corporation, on the ground of being immaterial and irrelevant.)

Q. (Repeats question.) Were you instructed, or did you at the request or order or direction of the McCaskill Company, buy any other homestead entry at this time from any other party, while you were in the employ of the McCaskill Company?

A. I do not remember that I did.

Q. Did you take any deeds like you did from your father to any other homestead entries?

(Further objected to by solicitor for defendant corporation, on the ground of being immaterial and irrelevant.)

A. For any other deeds? I take acknowledgments on land leases, but I do not remember taking any homestead entries.

Q. No homestead entries?

A. No, sir.

Q. Where did you take this deed from your father? Where was it? At what particular place?

A. At his residence, his home.

Q. How long has he resided there continuously?

A. Where he is now?

Q. No, where you took that deed at that time?

A. He has been there I do not know how many years, except what time he might have been on his homestead, it has been his home.

Q. For how long? The place where you got the deed?

A. I could not give the years; somewhere like twenty or fifteen years.

Q. At the time that you negotiated for this homestead entry from your father, did you inform Mr. McCaskill of the nature of the improvements? What there was on it?

A. No, sir. I do not remember that I did.

Q. You do not remember that you did?

A. No, sir.

Q. Was anything said between you and McCaskill about what there was on the place?

A. Not that I recollect.

16 Q. How long have you known Mr. McCaskill at Freeport? How long has he resided at Freeport?

A. I could not tell how long. Ever since I can remember; twenty or thirty years.

Q. Do you know, or state, whether Mr. McCaskill was acquainted with this section, or this forty, or quarter section, that was being bought?

By Judge Maxwell:

Of your own knowledge.

By Mr. Sheppard, continuing:

Q. In any of your conversations, did you give any information to Mr. McCaskill in regard to this land?

A. I do not remember that I did.

Q. Did you ever see Mr. McCaskill in the woods at that time?

A. I have seen him in the woods, but not on this particular land.

Q. How far is this homestead of Josiah Ward's located from any public road or thoroughfare leading from one community or place to another?

A. It is about one and a quarter mile from Freeport to the Dead River.

(Stenographer did not fully understand this answer, and asked witness if he meant the homestead was 1 and a quarter miles from the Freeport road which is traveled to go to the Dear River, and he answered, yes.)

Q. That is not a public road? It is a traveled road?

A. Yes, sir; it is a traveled road.

Q. At the time of this negotiation between the McCaskill Company and Josiah Ward for the homestead, was there any correspondence passing from the McCaskill Company to Josiah Ward through you?

A. My recollection is that there was a letter; that I carried a letter to my father from McCaskill.

Q. Where is that letter?

A. I do not know.

Q. Have you made any examination, or looked for it in any place where it was last known to be, or kept?

A. I asked my father if he had the letter, and he said that he did not keep any letters or papers; that he did not know anything about it.

Q. You delivered that letter to your father?

17 A. My recollection is that I had such a letter. I would not be positive that I gave it to him or not, but I think I did.

Q. Can your father write?

A. Yes, sir.

Q. Was it read in your presence, or did you read it to him?

A. I do not remember whether I read it to him or whether he read it in my presence.

Q. Do you know whether you kept it or delivered it to him?

A. My recollection is that I gave it to him.

Q. Have you searched in your father's house for this letter?

A. No, sir.

Q. Do you know whether he has?

A. I only know that I asked him about the letter, and he told me that he did not know anything about it. He said: "If I ever got such a letter I do not remember." "I do not keep old letters or papers."

(The above is objected to by the solicitor for the defendant, on the ground that [it] is here-say [hearsay] testimony.)

Q. Do you know the contents of the letter? You read it yourself, did you?

A. I do not know that I would be able to repeat the exact contents.

Q. Do you know the substance, or who it was from?

Q. [A.] My recollection is that he would give to him $100 00 net on his homestead. That is, that he proposed to give him $100.00 net on the homestead.

Q. Anything about furnishing any other money, and the amount?

A. No, sir; there was nothing stated in the letter about furnishing any money.

Q. Money for commutation?

A. I do not remember whether the letter stated that he would furnish him any money or not, but that is the way I understood from the—

By Judge Maxwell:
Do not state what you understood; state what you know.

Mr. Sheppard, continuing:
Q. State the substance of the letter?
A. My recollection is that the substance of the letter was that he would give him one hundred dollars net on the homestead.

By Judge Maxwell:
State the contents of the letter as near as you can
18 word for word, and let the letter speak for itself.
You have stated what you knew to be the substance of the letter with reference to the price net. Have you any recollection to any other contents of the letter with reference to money that was to go for the commutaion of the homestead?
A. No, sir; I do not know.

Mr. Sheppard:
Continuing:
Q. At that time, you were familiar were you not with the improvements and the house that was on the homestead entry?

(Objection by solicitor for the defendant as being immaterial and irrelevant.)

Q. And of the nature of the residence on this homestead entry, at the time you made this transaction?
A. Yes; I know there was a small house and this farm, as I have spoken of.
Q. Such improvements as you have described?
A. Yes, sir.
Q. And the time that you were acting—at the time that you were negotiating this with your father, it was a transaction for the McCaskill Company, and by their authority?

(Objection by solicitor for defendant, on the ground that the question is leading, and putting into the mouth of the witness what he has not stated).

By Mr. Sheppard:
Continuing:
I will change the character of the question.
Q. Who instructed you, or by whose authority did you

buy this homestead? How came you to speak to your father about selling to the McCaskill Company?

A. I do not remember how I came to mention it. That was in my way of business. Any land that was for sale or on the market, I usually made the proposition, and asked them about it; proposition to the McCaskill Company.

Q. Were you instructed by the McCaskill Company to negotiate for this homestead entry?

A. Yes; at the time I took the deed I was.

Cross Examination.

By Judge E. C. Maxwell:

Q. Mr. Ward, as I understand it, your father suggested to you that he thought he would dispose of this land, if he could get one hundred dollars in addition to what it cost him, and you submitted that proposition to Mr. McCackill, and they accepted it?

A. Yes, sir.

Q. You were asked after that; and in your testimony, you stated that you had authority to negotiate the purchase, that is, that after this had been accepted, they got you to close it with your father in getting the deed for it?

A. Yes, sir.

Q. Mr. Sheppard asked you how long your father had resided continuously on that land, and you said for some length of time excepting such time as he may have been on the homestead. He followed that up in questioning about the length of time, and you stated the number of years without stating that exception. Do you mean it was for that number of years, except such time as he was on the homestead? The second time you stated that he had been there fifteen years without the same qualification. This would have to be inserted in the answer, as the homestead was only entered some few years ago. In other words; he has lived on this place such a number of years, excepting such time as he resided on the homestead?

A. Yes, sir.

Q. Is your recollection clear that you carried a letter from the McCaskill Company, concerning the homestead to your father?

A. Yes, sir.

Q. From whom did you get that letter?

A. My recollection is that I got it from Mr. R. E. L. McCaskill.

Q. The only search that you have made for it is to ask your father, if he knew where it was?

A. Yes, sir; all the search I have made.

Q. And this letter, as you have stated, was simply accepting the proposition which you had made for your father to them; that is, that they would be willing to pay one hundred dollars net above what it cost him?

A. Yes, sir; that they would be willing to pay him the one hundred dollars.

Re-Direct Examination.

By Mr. Sheppard:

Q. You stated in your explanation to Judge Maxwell's question that your father lived on this place that you have described as his home, for fifteen years, excepting what time as he may have been on the homestead. That was your answer. Now, where did he live when you visited him the several times that you went to see him?

A. Where he now resides, at the old home.

Q. At the old home?

A. Yes, sir.

Q. Did you ever see him at this homestead?

A. Yes, sir; I have seen him on it.

Q. How many times?

A. I do not remember.

Q. What was he doing?

A. I was helping him locate it.

Q. What do you mean by "locating" it? Surveying it?

A. Yes, sir.

Q. That was the only time you have seen him there?

A. Yes, sir; I believe it was.

Q. If that was the only time you saw him there, Mr. Ward, how do you know whether he ever lived on that homestead or not? How do you know that he ever lived at all on that homestead, excepting the time that you helped him locate it?

A. I have not stated that I saw him on it, or that I knew that he lived on it.

Q. You have no knowledge of whether he had ever been on the homestead as a residence, whether he ever resided on the homestead? Did you ever see him on that homstead at night, or living in that house?

A. No, sir. I have not been at that house at night.

Q. You have never been within one half mile of it, excepting that first time?

A. I have never been directly to the house.

Q. And you do not know whether your father lived there or not?

A. I could only say so from hearsay. I have not seen him there.

Signature waived to this and all other testimony taken this day.

Direct Examination.

JOHN G. WARD.

By Mr. W. B. Sheppard:

Q. Please state your name?

A. John G. Ward.

21 Q. Residence?

A. Bruce.

Q. Do you know the company of J. J. McCaskill?

A. Yes, sir.

Q. Was it the J. J. McCaskill Company, in 1903?

A. I think so, sir.

Q. Do you know Josiah Ward?

A. Yes, sir.

Q. What relation is he to you?

A. My father.

Q. Where did Josiah Ward live in 1903?

A. He lived where he now lives.

Q. The whole year of 1903?

A. So far as I knew.

Q. In 1902?

A. He lived in the same place, so far as I know.

Q. Do you know where is situated the homestead entry that he made, or attempted to make?

A. I know that I helped him locate a homestead. I do not know if it is the one I located for him.

Q. Do you know of any other homestead entries that he had located in that country?

A. Nothing but this. In Township One (1), north of Range Seventeen (17), West, in Section Eight (8), if my recollection serves me right.

Q. How far was that from where your father lives?

A. I think it was about three miles.

Q. How far did you live from your father at that time?

A. I lived about four or five miles. I did then, and I do now; the same place.

Q. Were you frequently at your father's house during 1902 and 3?

A. Yes, sir; I might say frequently, once a month. Might have been oftener, and sometimes I do not go there within three months. Do not go as often as I ought to go.

Q. He was living with his family at that place?

A. Yes, sir.

Q. Do you know whether your father actually ever resided on this homestead?

22

A. I do not know.

Q. You have been there often?

A. Never been there since I located it for him.

Q. Do you know whether he has sold the entry?

A. Only by hearsay.

Q. From whom did you hear that?

(Judge Maxwell, solicitor for defendant, objects to question and answer as being hearsay testimony).

Q. Have you had any conversation with Josiah Ward or J. J. McCaskill, with reference to the sale?

A. The first information I got of it—I disremember how I heard it. I asked Warren about it.

Q. Did you ever speak to Mr. McCaskill or any of the company about it?

A. Yes, sir.

Q. With whom?

A. Mr. McCaskill.

Q. J. J. McCaskill?

A. Yes, sir.

Q. Did you understand from him the terms of the purchase of the homestead entry, or from your father?

A. I do not know.

Q. What did he say?

A. He said he had bought on Warren's say-so. As to his stating on what terms, he did not.

Q. In other words, that Warren Ward—

A. He said on Warren Ward's say-so.

Q. That was your understanding? Did he tell you whether or not he had authorized Warren Ward to buy it for him?

A. He did not tell me that, whether he had authorized him or not.

Q. Did you ever see the letter that was addressed by the McCaskill Company to your father with relation to the purchase of this property?

A. I do not know, sir.

Q. Do you know anything about such letter?

A. Nothing; only hearsay.

23 Q. Who was that hearsay from?

A. I don't remember now, but any way I heard of the letter, but I asked my mother and—

Q. You need not state what your mother said. Did you ever assist in a search or investigation for that letter?

A. I asked my mother to let me see the letter.

Q. Well, what else did you do?

Q. [A.] Could not find it.

Q. Did you look for it?

A. Yes, sir; me and my mother. Father was away from home.

Q. He was not there?

A. No, sir; he was away from home.

(Judge Maxwell, solicitor for defendant, waived cross-examination of witness).

Direct Examination.

WILLIAM JOSIAH WARD.

By Mr. W. B. Sheppard:

Q. State your name, Mr. Ward?

A. W. Joe Ward is my name. My name is signed "William Josiah Ward." Josiah is my other name.

Q. Where do you reside?

A. Walton County, Florida.

Q. How long have you lived there?

A. I came there immediately after the war. I do not know how long that is; about forty years. Would that be right?

Q. Were you the entry-man, the "William Josiah Ward," who entered the north half of the northeast quarter, the southwest quarter of the northeast quarter, and the southeast quarter of the northwest quarter of Section Eight (8), Township One (1), north of Range Seventeen (17), west?

A. Yes, sir.

Q. How far is that homestead entry from the place of your residence, where you lived then, and where you live now?

A. Three miles.

Q. How long did you live on that homestead
24 entry, if at all?

A. I never did move my family on the homestead. I visited the homestead, and worked on it and looked after it.

Q. What sort of a house; or what was the size of the house which you built on the homestead?

A. I built a small house, out of pine poles.

Q. What dimensions?

A. 12x14.

Q. Was it floored? Did you floor the house?

A. No, sir.

Q. Was there any door to it?

A. No, sir.

Q. Was there any ceiling or boards slatted on between the poles or the interstices?

A. No, sir.

Q. Any chimney to the house?

A. No, sir.

Q. How much land did you have fenced and cultivated?

A. A small piece, not larger than the house.

Q. Did you ever have your family there on any night? Ever spend any night with your family there?

A. I stayed there at night myself. My wife did not go there. She was very sickly.

Q. About how many nights in the week did you spend there?

A. I do not think I stayed in the same week more than one night in the week.

Q. How many crops did you culitvate during the three years, during the time you had it under claim?

A. I planted a patch two years.

Q. What was the enclosure around the patch?

A. Pine rails and poles.

Q. Did you commute this entry, Mr. Ward?

A. Yes, sir.

Q. Do you remember about when that entry was commuted?

A. I don't remember the date exactly, about a year and a half after I took it up, or fourteen months, I believe, or a little longer than that.

Q. Where did you commute it? Where did you
25 make your final proofs?

A. At DeFuniak Springs, Walton County.

Q. Who furnished the money with which you commuted this entry?

A. I furnished it.

Q. Where did you get it?

A. I got it from McCaskill.

Q. Which McCaskill?

A. J. J. McCaskill.

Q. How much money did you send up with your final proofs?

A. I don't know, enough to amount to a dollar and a quarter an acre, whatever that amount was.

Q. Did all this money come from McCaskill?

A. All the money I get, that, and all other comes from McCaskill.

Q. How long after you made your final proofs at DeFuniak, before you sold this entry to McCaskill?

A. I sold it directly after I got the title to it.

Q. How long after you made the final proofs before you made the deal?

A. I don't know; there was a little delay. I don't know the exact time, I had to send a little more money than I sent the first time.

Q. Did you make the trade with McCaskill for the homestead entry?

A. Not directly.

Q. Well; state how, and with whom?

A. I made it through his agent.

Q. Who was his agent?

A. W. A. Ward.

Q. Well, now, state, Mr. Ward, how the proposition came to you from McCaskill, and what that proposition was for your homestead entry?

A. Of course, the trade was managed through W. A. Ward.

Q. State who W. A. Ward represented in his talks and conversations with you about it?

A. J. J. McCaskill.

Q. What was paid you for the homestead entry?

A. I wish to be excused for not answering, until I see the title deed to the land. There is a little difference in the amount of money I was to have for the title.

Q. State what was paid, and, if you do not know, state that you do not know the consideration. State your recollection?

A. I gave the deed to Warren Ward. He gave me over one hundred dollars to the best of my recollection, the exact amount, I cannot say at this time.

26

Q. Where did you make the deed?
A. Right in my house, at home.
Q. Warren Ward took the deed from you, did he?
A. Yes, sir.
Q. He fixed the deed up which you signed?
A. Yes, sir.
Q. And that deed was to J. J. McCaskill & Company or not?
A. Yes, sir.
Q. You say, Mr. Ward, that the money you paid in commutation was your money that you got from McCaskill?
A. Yes, sir.
Q. Do you remember how much that was?
A. I have tried to answer that question one time. I don't remember the amount.
Q. Was it one hundred dollars or two hundred dollars, or more?
A. I think it was over—I think the money I sent for to commute was over two hundred dollars.
Q. Did McCaskill, or any of the company hand you that two hundred dollars?
A. No, sir.
Q. How did you receive it?
A. To the best of my recollection, it is that I sent him a letter to forward me two hundred dollars to Mc McLean, to get my land with.
Q. Is that where it was forwarded? You found it at De-Funiak, when you got there?
A. Yes, sir; I found a check.
Q. Was that money a present? Was it given to you by the McCaskill Company, or loaned to you?
A. No, sir. I gave McCaskill credit for the money as soon as I got it. We run accounts; the money was coming to me.
Q. Money that was coming to you?
A. Yes, sir.
Q. What for?

27 A. Labor, logging. I worked for him eight years, and averaged four or five hundred dollar's worth of timber every year.

Q. How long since you had had any settlement with McCaskill for any logs?
A. Eight or ten years up to now.
Q. How long when you received that two hundred dollars? How long had it been since you had delivered him any logs to the time you received that two hundred dollars?

A. I cannot answer that question, for I don't know. We deliver logs once a year, and between that time; I don't know now, when I delivered him the last logs; how close connection the delivery of the logs and the money was to each other.

Q. Have you received at any time since any money for the homestead entry?

A. Never had a settlement for the homestead, no, sir.

Q. Where did you get the one hundred dollars that Warren Ward paid you?

A. He paid me that much money, and I gave him credit for it at the time I made the deed, because I needed it.

Q. Did you understand that one hundred dollars was from McCaskill & Company?

A. Yes.

Q. Then you had received three hundred dollars from the McCaskill Company?

A. I think so.

Q. How long a time had it been when you received that one hundred dollars since the time you had had any settlement between you?

A. The last one hundred dollars? Never been a word up to now.

Q. The way you do your logging business then, is, you turn loose your logs, and McCaskill gets hold of them, and when he sees fit to send you any money, he sends it?

A. Whenever I call on him for any money, he sends it.

Q. How many logs have you sold him since you received the one hundred dollars?

A. Eight or nine hundred dollars?

Q. Have you been paid for them?

A. No, sir; not for all.

Q. Have you been to Freeport to make your settlement?

A. About three or four times in seven or eight years, or so.

Q. McCaskill is your banker?

A. Where my money lies.

Q. And you do not have any regular settlements with them, no squaring up?

28 A. We are going to have. We keep putting it off. I have not been to Freeport in seven or eight years, except when I was going from Pensacola three or four times, and then I was going from Pensacola, and not there specially to go to Freeport.

Q. How and when did you learn first that the McCaskill Company wanted this homestead entry?

A. I knew they wanted all the land they could get. I put it on the market several times. As soon as I got deeds for the land, I offered it for sale. I had several bids made on it. McCaskill also wanted it.

Q. How did you learn that McCaskill would buy this homestead entry?

A. There might be twenty ways that I learned it. How I learned it, of course, Warren Ward was helping him buy all the land he could get, and I saw Warren. I never saw McCaskill about it.

Q. What were the terms between Warren Ward and you for this homestead entry?

A. Warren said McCaskill wanted the land. "Well I says, "He shall have it," and that was about all the trading that was done.

Q. What was said about the consideration; the money?

A. That is a question I am not able to answer. I say one thing, and some thinks another.

Q. Let us have what you say?

A. I think the consideration—that is what I charged on my book, "Homestead Land, $400.00."

Q. You charged them $400.00?

A. That is what I think.

Q. How much did he pay you?

A. He has never paid me anything specially on the land, unless that one hundred dollars might have been considered on the land. There was no writing. That one hundred dollars came to me, because I needed it.

Q. You made a deed at the time you received that one hundred dollars?

A. Yes, sir.

Q. State whether or not there was anything said between you and your son who was buying this land, as you understand, for the McCaskill Company—

(The form of question was objected to by solicitor for defendant, as putting a statement into the mouth of the witness, etc.)

29 Q. What did you say to your son, Warren Ward, as to what you wanted the land to net you, if anything? What did you say to him as to what you wanted for that land? What were you selling in that deed, and what were you getting?

A. I think the consideration was four hundred dollars in the deed.

Q. You say that was what the deed expressed?

A. I think so, that is the reason I will not answer that question until I see the deed. If I am mistaken, I do not want to go any further.

(Witness examines deed, and learns that the consideration is for four hundred and twenty-five dollars, and says:—)

A. That is what I charged him, $425.00 It seemed to me it was $400.00.

Q. Recurring to the conversation between you and Warren Ward at the time you made the deal with him to sell this land, what did you say to Warren about what you would be satisfied, if anything, for that homestead entry, or the balance that you wanted, or required on it, if so, what amount? (Witness hesitates). Will you answer?

A. Yes; I will answer it. I said I wanted all I could get for the homestead. It was valuable, and I was needing it.

Q. Did you say you would be satisfied if you could get net one hundred dollars for that homestead? If so, what did you say about it?

A. I said that we have never given it anything like the net value or profit on the homestead. I don't know what you are talking about?

Q. Have you made any statement under oath to Mr. Paul, in relation to the transaction you had with Warren Ward, as the agent for the McCaskill Company?

A. Yes, sir.

Q. Was your statement written down?

A. He wrote it down, Mr. Paul did.

Q. Did you read it over?

A. I do not think I did.

Q. Did you hear it read over?

A. If I did, I do not remember it, whether he read it to me or not.

Q. Did you sign it?

A. I guess I did.

Q. Where was that written statement made?

A. In my dwelling house.

Q. Did you say anything in that written statement as to your transaction with Warren Ward, and what you said was the price, or the consideration you would take for it?

30

A. We never mentioned the consideration of the land, of the deed, as well as I can remember in the affidavit.

Q. Did you say in that statement, Mr. Ward, who furnished, or where you got the money for the commutation of the entry?

A. I don't recollect.

Q. You do not remember that you stated that Warren Ward furnished you the two hundred dollars that went up with the commutation fee for the entry?

A. If I made that statement, I do not remember it.

Q. And you did not state the understanding with you and Warren Ward was that you were to get one hundred dollars net for your homestead entry?

A. I don't remember having made such a statement.

Q. Did you make such a statement to Mr. Paul?

A. If I did, I don't recollect it.

Q. Do you deny that you made such a statement?

A. No, sir.

Q. You may have made it?

A. I may have made it.

Q. If you made such a statement, Mr. Ward, which is the truth, the statement that you made to Mr. Paul at your house, when he wrote down your statement, as to who furnished the money that went up for the commutation, and as to your receiving or being satisfied, with one hundred dollars, or your statement now, that you got four hundred and twenty-five dollars for the homestead, and that McCaskill owed you the money? Which is true?

(Judge Maxwell, solicitor for the defendant, objects to the question, on the ground that "there is no inconsistency between the statements. Whether the money actually went to DeFuniak, or was brought by Warren Ward is nothing.")

Q. You admit now that you made a statement to Mc [Mr.] Paul, in writing at your house?

A. Yes.

Q. I have asked you if you remember stating, or, if you did state to him that your son W. A. Ward brought you the money or furnished you the money for the commutation of the homestead, and, whether you stated in that written statement that the terms upon which you sold the lands to Warren Ward, the agent of the McCaskill, was one hundred dollars net to you for the homestead entry?

31 A. I don't remember making that statement to Mr. Paul. I knew that money was sent to DeFuniak.

Q. Which is true?

A. I did not get that money from Warren A. Ward, that two hundred dollars, he never handed it to me, I am sure.

Q. Which is true now? What you say, that the homestead brought you four hundred and twenty-five dollars, or that you sold it for one hundred dollars net?

(Objection by Judge Maxwell, solicitor for defendant, as to showing what the written statement contains, or that there is any inconsistency).

A. I am sure what you say about the one hundred dollars net, one hundred dollars would not cover the expenses. There would not be enough left. The expenses of my witnesses to DeFuniak, and the net expenses. You mean to say that I got one hundred dollars over what it cost me?

Q. Did you actually get one hundred dollars net, or what did you get?

A. If I get the consideration at what I charged it for, I will get more.

Q. You claim that you have not been paid?

A. I know I have not been paid the last of it.

Q. You knew you had not been paid when you made this statement that we are referring to, to Mr. Paul at your house?

A. I knew it then as well as I know it now.

Cross-Examination.

By Judge E. C. Maxwell:

Q. You spoke of Mr. Warren Ward as Mr. McCaskill's agent, do you know of your own knowledge what authority he has as agent for McCaskill?

A. No, sir.

Q. You simply know that he carried the message between you and Mr. McCaskill in effecting this sale?

A. Yes, sir. He acted for McCaskill.

Q. Do you know anything of his authority excepting that he carried the messages between you and McCaskill?

A. No, sir.

Q. That is all you knew as to any authority he has, simply that he interviewed, and was the means of communication between you and Mr. McCaskill; that is correct?

A Yes, sir.

32 Q. You stated that as soon as you bought this land, that you told your son, Warren, that you were going to put it on the market, and what price you wanted for it?

A. I told him it was for sale, and I don't remember if I told him the price.

Q. You did tell him it was for sale?

A. Yes.

Q. And that was before he said anything about McCaskill's wanting it, was it not?

A. That was the first of my putting it on the market, and I do not know whether I had heard anything of McCaskill's wanting it before or not.

ANTOINE PAUL:

Direct Examination.

By Mr. W. B. Sheppard:

Q. Do you hold any official position with the government, Mr. Paul?

A. Yes.

Q. What is that?

A. Special agent of the General Land Office.

Q. How long have you been such agent?

A. Since July, 1898.

Q. Do you know William Josiah Ward, the witness who testified here?

A. Yes, sir; I have known him for the last two or three years.

Q. Do you know where his homestead entry is located in Walton County?

A. Yes, sir.

Q. How many times have you seen it?

A. I have only seen the entry once.

Q. How long since?

A. It was the 20th of December, 1904.

Q. Was it after the final commutation had been made?

A. Yes, sir.

Q. Did you inspect the improvements, or the character of the residence and cultivation?

A. I did.

Q. Well, describe in detail the character of the improvements?

A. I found a little pine pole cabin there, 11x13 feet, not completed, there was no door to go in or out of. There was no window, no chimney, the openings between the poles were not closed, the gable ends were not closed.

33 Q. Had there ever been any habitation?

A. There was no evidence of any habitation.

There was also a little inclosure, 30x35 feet, a little mound, that was about a quarter of a mile from the cabin.

Q. There was no inclosure around the cabin?

A. No.

Q. From the evidence you saw there, there had been no actual living on the place?

A. There was no evidence of any residence or habitation there at all.

Q. Do you know where Josiah Ward lived at that time?

A. Yes, sir.

Q. How far from his homestead?

A. Something like three miles, or a little more, I think from there.

Q. Did you call upon Josiah Ward at the time of this visit you made to this homestead entry?

A. Yes, sir.

Q. At his home?

A. At his house.

Q. Did you interview him, or have any consultation with him about the sale of that entry, or to whom, the price, etc.?

A. I had a conversation with him, and took a sworn statement from him, as to what he received and what the transaction was.

Q. Have you that statement here?

A. Yes.

Q. With your report?

A. Yes.

(Judge Maxwell, solicitor for defendant, objects to the introduction of the statement of William Josiah Ward, on the ground that no sufficient predicate has been laid for its introduction, if he now wishes to introduce said statement in evidence).

Q. What was Mr. Ward's testimony at that time in relation to the sale to McCaskill, and through whom it was negotiated, and what he was paid?

A. His statement to me—

31 (Objections were here made by Judge Maxwell, solicitor for defendant, and after some conversation between solicitors, Judge Maxwell made the following objections: that the introduction of the statement of William Josiah Ward is not in rebuttal of any questions and answers that have been put to the said witness, and that no sufficient predi-

cate was laid, and that the witness was not shown the written statement, and asked as to whether he had made it; that he objects now to any reference from Mr. Paul to any such statement, or to his examination about it as testimony. Statement is in writing; objects to any oral statement of Mr. Paul's, a year or two afterwards).

Q. Do you recollect going to Mr. Ward's house, and interviewing him on this matter?

A. Yes.

Q. Do you recollect distinctly what he said in relation to these matters I have just inquired about? What the price was net to him, without reference to any written statement or memorandum?

A. Yes, sir; I recollect that very distinctly.

Q. Do you recollect of your own mind, without reference to any written statement that was made or taken, the statement of Josiah Ward as to who furnished, or where he got the money that went to commute the entry?

A. Yes, sir.

(Objection by solicitor for defendant, to Mr. Paul stating his recollection of any verbal statement made to him by William Josiah Ward, on the ground that no predicate has been laid as to any such statement, and to his saying anything of the contents of a written statement, because no such statement has ever been submitted to the witness, William Josiah Ward, and that the written statement is the best evidence of its own contents).

Q. State the circumstances of your visit, and your interview you had with him?

A. After examining the entry, I drove to Mr. Ward's place, and proceeded to interview him relative to his residence and cultivation of his homestead, and he stated to me that he was getting old and feeble; that he had not lived on his homestead entry; could not very well, and that he thought he was going to lose it—

By Mr. Sheppard:

You need not go into that.

A. I will go right to the point.

35 By Mr. Sheppard:

Yes, the two points.

A. He told me he thought he was going to lose it. That was the beginning. He said: "I thought if I could commute my homestead, I could have a little to take, as I am getting old and poor, with nothing to live on, and my son, Warren, as agent for J. J. McCaskill, I told him to come here, and I told him, if I could get one hundred dollars clear from all expenses, net to me, I would undertake to commute."

(Judge Maxwell, solicitor for the defendant, moves to strike this and preceding testimony, on the ground that it is not responsive to the question, and on the ground that it is hearsay testimony, and that no sufficient predicate has been paid for it as impeachment of the testimony of William Josiah Ward).

A. (Witness continuing): and Warren agreed to give me one hundred dollars for J. J. McCaskill & Company.

By Judge Maxwell:

Q. Is all of this in that writing?

A. Yes.

(Objection by Judge Maxwell, solicitor for defendant, on the ground that the witness, William Josiah Ward, was not interrogated along the same line. Mr. Paul was told to confine his testimony to the two points allowed by Judge Maxwell).

Mr. Sheppard:

Continuing:

Q. Is this report, or what purports to be a report, a document prepared by you?

A. Yes; and sent to the department.

Q. Is this a report made by you?

A. Made by me, and sent to the department, at Washington.

Q. Is attached to that report the statement of those witnesses?

A. Yes, sir.

Q. And is the statement of Josiah Ward attached to that, the one that he subscribed at the time you went to see him in relation to this entry, and took his testimony?

A. Yes, sir.

(Judge Maxwell, solicitor for defendant, objects to the in-

troduction of the affidavit of William Josiah Ward, on the ground that no sufficient predicates was laid for it as impeaching the testimony of the said William Josiah Ward. That said statement was not submitted to the said Ward, when he was testifying, nor was he given any opportunity of ascertaining what it contained, or of making any explanation, if he desired, of any of its contents, and that the time and circum-
36 stances under which it was made were not sufficiently indicated in the predicate).

Statement is admitted, subject to the objection made by Judge Maxwell. It was also agreed that the testimony of Mr. Paul should be submitted to the solicitor for defendant, and to the solicitor for the complainant; that such testimony as was to be stricken, could be marked out and the testimony rewritten.

There was also offered in evidence the certified transcript of the homestead proofs; documentary evidence of the homestead proofs, certificates and receipts of the William Josiah Ward entry, certified by the Commissioner of the Land Office, under the seals of said office, as offered by the government, and marked Exhibits "A" and "B."

There was also offered by the defendant, the deed from W. Joe Ward (William Josiah Ward) to J. J. McCaskill, and marked Exhibit "C," and the patent to William Josiah Ward, marked "Exhibit D."

J. J. McCASKILL.

Direct Examination.

By Judge E. C. Maxwell:

Q. Your name is J. J. McCaskill?

A. Yes.

Q. You were, or are the president of the J. J. McCaskill Company?

A. Yes, sir.

Q. That company was not in existence, was it Mr. McCaskill, on the 4th day of September, 1903?

A. No, sir.

Q. Is this deed—did you purchase from W. J. Ward the property in controversy in this suit, the north half of the northeast quarter, the southeast quarter of the northeast quarter, and the southeast quarter of the northwest quarter, Section

Eight (8), Township One (1), north of Range Seventeen (17) west?

A. Yes.

Q. Is this the deed that you received from him?

A. Yes, sir.

37 Q. Any interest which the J. J. McCaskill Company, the present corporation, has in that land is that which you made to it through this individual purchase from Ward?

(Deed is to J. J. McCaskill.)

A. My impression is that—my recollection is now that I made him (his son, R. E. L. McCaskill) a deed to a quarter interest in that before the J. J. McCaskill Company was incorporated.

Q. Any interest the corporation has in it is that derived from this deed?

A. Yes, sir.

Q. Mr. McCaskill; in the purchase of this property from whom did the proposition come?

A. W. A. Ward.

Q. He is the one who negotiated about the property?

A. Yes; W. A. Ward.

Q. Is that the first witness who was on the stand?

A. Yes.

Q. Will you state what proposition you received from him?

A. I do not remember exactly what the proposition was. He came and submitted the proposition, and I asked him about the land.

Q. From whom was the proposition that he submitted?

A. From his father, William Josiah Ward.

Q. He came to you, and submitted a proposition which his father made for the sale of this land?

A. Yes, sir.

Q. And that was the beginning of any negotiations with [which] ultimately resulted in this deed?

A. Yes, sir.

Q. Did Warren Ward have any authority from you as agent to buy or sell land?

A. No, sir.

Q. When this proposition was made to you in regard to this land, did you have any knowledge of the conditions contained in the homesteading of that land, or whether it was full and regular or not?

A. No, sir.

Q. Did you, or did you not, have any knowledge of the conditions contained?

A. I did not know a thing in the world. I had never been on the land in my life to my knowledge.

38 Q. Did he at that time, or at any time prior to the purchase of the land, make any representations to you indicating that the entry, or inclosure, or patent of or to that land was not regular in any respect?

A. No, sir.

Q. Did you have any information from any source that that was the case, or did anything lead you to suspect that it was not regular?

A. No, sir; no information.

Q. I believe you stated you had not been upon the land, and had no personal knowledge of its conditions?

A. Never been on the land before or since to my knowledge. I might have been on the land before or since, but I did not know it.

Q. If you had been on it at all, it was simply in passing over it without knowing its identity?

A. Yes.

Q. This is the patent that was given to you in connection with the deed when you purchased?

A. Yes.

Q. This is the patent that W. A. Ward delivered to you when he delivered the deed?

A. Yes.

(Deed and Patent offered in evidence, and marked Exhibits "C" and "D.")

Q. As I understand it then, this proposition was submitted to you by Mr. Ward, as coming from his father, and you, without any knowledge, or any recollection, or reason to suspect anything wrong in the patent, told Mr. Ward that you would take it, and he closed the deed?

A. Yes.

(Question objected to to by Counsel for the Plaintiff, as being a leading question, etc.)

Q. You paid for this deed?

A. Yes, sir.

Cross Examination.

By Mr. W. B. Sheppard:

Q. From whom did you receive this patent that has been offered in evidence?

A. I think W. A. Ward brought me the patent.

Q. You are not certain about that?

39 A. No, sir.

Q. If given to any other person, where was it to be sent, and to whom?

A. Sometimes they authorized us to have the patents come to our care. While they belong to the parties, they are in our care until we deliver them to the parties.

Q. Did Mr. McLean have any instructions from you as to what to do with this patent?

A. Not that I remember.

Q. You are not familiar with the location of this entry?

A. No, sir.

Q. How often do you pass through that country in 1903 and 1904?

A. I might not have been there more than once. I might not have been there in 1903 and 1904 at all.

Q. Have you stock, cattle or sheep, in that locality?

A. No, sir.

Q. How did you come to speak to Warren Ward with reference to this homestead claim?

A. He spoke to me. I did not know a thing about his fathers homestead.

Q. Do you remember when?

A. No, sir.

Q. How long before he made his final proofs?

A. I do not remember.

Q. Do you know when the final proof was taken at De Funiak?

A. No, sir.

Q. Did you send any check to W. J. Ward there?

A. I think I did send a check to W. J. Ward or to the clerk for him. I am not sure about that. Our books show that we gave a check for $205.00.

Q. To Josiah Ward?

A. Yes, sir. There were several checks given. I noticed one for $205.00.

Q. At the time you took this patent, there was no corporation at that time?

A. No, sir.

Q. Has there been any conveyance by you, or your son; has there been a conveyance by the J. J. McCaskill Company of this land, of these lands, including this entry?

A. Is in the name of the J. J. McCaskill Company.

Q. How far is this entry from the river?

A. I could not tell. I know about where the section is that they told me it is on. It must be three or four miles.

40 Q. You have never been to the river?

A. I have some land on the East side of 8 (Section 8.)

Q. You did not see this cabin when you went there?

A. No, sir; I never travel the road they spoke about. There is a road that runs through the East side of 8 (Section 8), the road I travel to the Dead River.

Q. How many other homestead entries did you buy, Mr. McCaskill, through this Warren Ward about the time you bought this one?

(Objected to by Solicitor for Defendant, as being immaterial and irrelevant).

A. I do not remember buying any other homesteads besides this, though I might have done so.

Q. Did you give instructions to this Warren Ward to look up these claims for you, and to procure them for you?

A. No, sir.

Q. And he made no negotiations except this one?

A. Well, he quit our service a short time after this trade was made. He went to work for the Jernigan Lumber Company. Was not in our service much longer after this trade was made. That is my recollection.

Q. I understood you to say in your direct testimony that you had not given this Warren Ward any instructions about procuring this Josiah Ward homestead?

A. If I ever said anything to him about it, I do not remember. My recollection is, that he submitted the proposition to me.

Q. And it was in that way you came to address the letter to Josiah Ward with reference to it?

A. I do not think I ever wrote a letter to Mr. Ward in regard to it. If there was any letter written, it must have been by my son. I wrote a letter to Mr. Ward a short time ago. I do not remember writing a letter to Mr. Ward with regard to this homestead at all.

Q You say that you sent to Josiah Ward at De Funiak a check for $205.00?

A. I do not remember whether I sent it to De Funiak or to his home. The books show that I sent him a check.

41 Q. What was that for?

A. I do not remember. We bought a great deal of cypress logs from him. Our books show a great deal of business between us, and unless I look on the stub I would not know what it was for, and sometimes the stubs do not show it.

Q. Have you any of those stubs with you?

A. No, sir.

Q. Have you bought any other homestead claim in the same Section 8?

A. I think so.

Q. About the same time?

A. No, sir; afterwards.

(Objected to by Solicitor for the Defendant, as being immaterial and irrelevant.)

Signature of witnesses waived.

On the ninth day of April, 1906, the Complainant filed with me as such Examiner, copies of deeds as follows:

1	W. J. Ward,	to J. J. McCaskill
2	J. N. Blackman,	" " " "
3	Jasper Ward,	" " " "
4	Geo. W. Miller,	" " " "
5	Jesse J. Ward,	" " " "
6	Cora Miller,	" " " "
7	John Crosby,	" " " "
8	Louis G. Ward,	" " " "
9	Rudolph J. Pate,	" " " "
10	C. E. Hewett,	" " " "
11	John Pate,	" " " "
12	J. W. Campbell,	" " " "

Which were offered by said complainant in support of its said Bill of complaint and as testtimony in this cause, which are herewith filed & reported marked by numbers as above.

In The Circuit Court of the United States For the Northern District of Florida.

The United States,
vs.
The J. J. McCaskill Co.

Be it remembered, that on the 11th day of May, A. D. 1906, before me, F. W. Marsh, as special Examiner, appeared a certain witness, to-wit, Mr. Henry S. Chubb, to testify and give evidence in the above cause. And all parties in interest being represented by their respective attorneys, to-wit, Mr. Wm. B. Sheppard, District attorney for the United States, and Judge E. C. Maxwell for the Corporation, the following testimony was taken, the witness first having been duly sworn according to law.

42

HENRY S. CHUBB.

Direct Examination.

By Mr. Wm. B. Sheppard:

Q. What official position do you hold, if any, in this State?

A. Receiver of Public Moneys at the United States Land Office, Gainesville, Florida.

Q. How long have you been such Receiver of Public Moneys?

A. Since the first day of April, 1898. That is the date I took charge of the office.

Q. Are you the custodian of the records of patents issued to public lands in this State?

A. I am, in conjunction with the Register.

Q. Have you such records present with you?

A. Yes. This is the record (Witness indicates book before him.)

Q. Refer to that record, Mr. Chubb, and see whether or not it contains a record of any patent issued to Cora Miller?

(Judge Maxwell, Attorney for Defendant, objects to the introduction of this testimony, as being immaterial, irrelevant and impertinent.)

A. The records show that Cora Miller's patent was issued August 16, 1904, and was sent to the care of McCaskill & Company, October 17, 1904.

Q. Does the record that you are now examining indicate to whom the patent issued to Cora Miller was sent?

A. Yes, to McCaskill & Company, at Freeport, Florida.

(Objection by Judge Maxwell, Attorney for Defendant, as hearsay evidence, and, therefore, not the best evidence.)

Q. You mean that there is a memorandum there that it was sent to the patentee in the care of McCaskill & Company?

A. Yes; the record shows that it was sent to the care of McCaskill & Company, at Freeport, Florida.

43 Q. Examine your record and see whether or not there was any patent issued to George W. Miller to public lands, and describe the lands.

A. Yes, sir; George W. Miller, date of patent May 5, 1905; sent to the care of McCaskill & Company, December 20, 1905, Freeport, Florida.

(Objection by Judge Maxwell, Attorney for the Defendant, as being immaterial, irrelevant and impertinent, and hearsay evidence, therefore not the best evidence.

Q. Have you any correspondence from J. J. McCaskill or J. J. McCaskill & Company, with reference to sending patents to them?

A. The Land office received a letter, addressed to W. G. Robinson, who is Register of the Land Office, on 12/13/4, requesting the George W. Miller patent to be sent to J. J. McCaskill & Company.

(Objection by Judge Maxwell, Attorney for the Defendant, as being hearsay, and not the best evidence, the letter should speak for itself, and as to the letter and any testimony concerning it, as being irrelevant, immaterial and impertinent.)

(Letter offered in evidence, and marked "Chubb, Exhibit "A".)

Q. Is there not a record of a patent to Lewis J. Ward?

(Objection by Judge Maxwell, Attorney for Deendant, as being hearsay, and not the best evidence, and as being irrelevant, immaterial and impertinent.)

A. Yes, sir.

Q. Read the description of the land?

A. No description of the land; the Docket does not show that.

Q. Give the date, and to whom sent?

A. Lewis J. Ward, date of patent, August 16, 1904, sent to J. J. McCaskill & Company, May 25th, 1905, Freeport, Florida.

Q. Was that sent in accordance with any request in writing?

A. Yes. (Witness offers letter, which is put in evidence as "Chubb, Exhibit "P".

Q. You identify that letter as the authority for sending it?

A. Yes.

Q. Examine your records, and see if you find any patent issued to Jasper Ward?

44 (Objection by Judge Maxwell, Attorney for Defendant, for the same reasons as given before, and also to all testimony concerning the letters on the ground that the signature is not shown to be authenticated.)

Q. To whom was that sent?

A. To the care of McCaskill & Company. Date of patent April 17, 1905. Sent to McCaskill & Company July 29, 1905, Freeport, Florida.

(Objection by Judge Maxwell, Attorney for Defendant, for the same reasons as previously given in said testimony.)

Q. Have you any request, or letter, from McCaskill & Company?

A. We have a letter here from J. J. McCaskill & Company with reference to Jasper J. Ward.

(Mr. Sheppard, District Attorney for the United States, offers letter in evidence, which is marked "Chubb, Exhibit "C".)

(Judge Maxwell, Attorney for Defendant, makes the same objections to the introduction of this letter as given previously.)

Q. Turn to your records and see if there has been any patent issued to Lewis G. Ward.

A. Yes; April 16, 1904.
Q. To whom sent?
A. J. J. McCaskill & Company.
Q. Examine record, and see if it is to J. J. McCaskill & Company?
A. It is: "J J. McCaskill & Company," though it could be either. I expect the record should be "The J. J. McCaskill Company". Sent, May 25, 1905, sent to Freeport, Florida.

(Judge Maxwell, Attorney for Defendant, makes the same objections to all of this as previously given in this testimony.)

Q. Examine your record, and see whether or not there as a patent issued to William J. Ward, state date, and to whom sent?
A. Date of patent June 3, 1903; J. J. McCaskill & Company, August 26, 1903, Freeport, Florida.

(Judge Maxwell, Attorney for Defendant, makes the same objections to the introduction of this testimony as previously given.)

45 Q. Have you a letter asking for that?

(Witness examines files, but is unable to find letter.)

A. The record shows that it was sent to J. J. McCaskill & Company, Freeport, Florida.

(Objected to by Judge Maxwell, Attorney for Defendant, for the reasons previously given.)

Q. Have you a record of a patent issued to William J. Ward, Jr.?
A. Witness examines record, and says: I do not seem to have any record of William J. Ward, Jr.

(Objected to by Judge Maxwell, Attorney for Defendant, for the reasons already given, being immaterial, irrelevant, impertinent, hearsay, and not the best evidence.)

Q. Have you a record of a patent issued to Jesse, Josiah Ward?
A. I have a record of that patent.
Q. What date was it?

A. March 11, 1904; sent to McCaskill & Company, April 11, 1905, Freeport, Florida.

(Objected to by Judge Maxwell, Attorney for Defendant, on the above grounds, just given.)

Q. Have you a letter from McCaskill & Company with reference to the patent you have just referred to?

A. Yes, sir. (Letter offered by witness.) (The same letter is afterwards offered and marked "Chubb Exhibit "F.")

(Objected to by Judge Maxwell, attorney for defendant, for reasons previously given.)

Witness answers further:

A. There is a patent to William J. Ward, dated December 20, 1905, but it does not appear to have been delivered to any one.

Q. Examine your records, and see if there is a patent issued to James M. Blackburn or Blackman, or some such name, and if so, to whom sent?

A. James M. Blackman, sent to patentee.

Q. Examine your records and see whether or not there was any patent issued to Willie Andress, and if so, to whom sent, and date?

(Objected to by Judge Maxwell, attorney for defendant, for reasons previously given.)

A. Yes; Willie Andress.

Q. What date?

A. June 30, 1905, date of patent, sent to patentee,
46 care of J. J. McCaskill & Company, August 17, 1905, Freeport, Florida.

Q. Was that sent in response to any request?

A. Yes.

Q. You identify that as the letter? (Witness having offered letter to attorney.)

A. Yes, sir.

(Letter put in evidence and marked "Chubb, Exhibit "D.")

(Judge Maxwell, attorney for defendant, objects to the introduction of this letter, for the reasons previously given.)

Q. Examine and see if you have a patent issued to Henry Boone, and if so, when issued, and to whom sent?

A. Yes, sir.

Q. Give the date?

A. November 15, 1905, date of patent, sent to McCaskill & Company, March 7, 1906, Freeport, Florida.

(Objected to by Judge Maxwell, attorney for defendant, on the grounds previously given.)

Q. Did you have any correspondence or request from the McCaskill Company as to that patent?

A. Yes, sir; a request to be sent to their care.

(Mr. Sheppard, Attorney for the United States, offers letter in evidence, which is marked "Chubb, Exhibit "E.")

(The introduction of the letter again objected to by Judge Maxwell, attorney for defendant, for the various reasons already given, which reasons appertain to the introduction of any and all of this testimony, with the various exhibits offered).

Q. Examine that letter, Mr. Chubb, and state from whom it purports to be from, and in reference to what?

(Objected to by Judge Maxwell, attorney for defendant, on the ground that the letter speaks for itself.)

Q. State whether or not you recognize that letter as having been addressed to you, officially?

A. Yes, sir; addressed to the office, to W. G. Robinson, Register.

47 (By Mr. Sheppard, Attorney for the United States, we now offer a letter from the McCaskill Company, signed by J. J. McCaskill, with reference to patents, the letter purporting to be signed by McCaskill and Ward both. (Referring to application for patent for Jesse Josiah Ward, marked "Chubb, Exhibit "F.")

(Objected to by Judge Maxwell, for reasons previously given.)

Q. Does your record that you have just read from indicate the location or description of the lands?

A. No, sir.
Q. Have you that record here?
A. I think not.
Q. Examine this paper ("Chubb, Exhibit "G.") Is that a certificate from your office?
A. Yes; signed by myself as Receiver.
Q. State whether or not that describes any of the lands mentioned in the patents?
A. Yes, sir.

(Mr. Sheppard, Attorney for the United States, offers letter from the Hon. H. S. Chubb in evidence, which is marked, "Chubb, Exhibit "G.")

(Objection by Judge Maxwell, attorney for the defendant, to this and any evidence in regard to it, as imaterial, irrelevant, and not the best evidence.)

Q. Was this memorandum, which gives the description of the lands contained in the patents to the Millers and Wards, made from the records of your office?
A. Yes, sir.
Q. Was it verified, verified by yourself?
A. Not personally, but it was verified by the clerk in the office, at my direction.
Q. Did you sign that certificate?
A. Yes, I signed that, and directed the Patent Clerk to do that work in person.

By Judge Maxwell:
Q. You did not yourself verify it?
A. No, sir; I directed the Patent Clerk myself, and the direction was not given by Mr. Robinson.

(Judge Maxwell, attorney for defendant, objects to any and all of the above testimony, for reasons already given.)

By Mr. Sheppard:
The District Attorney offers this certified copy by
48 the Receiver of the Land Office, for the purpose of identifying the lands.)

(Objected to by Judge Maxwell, attorney for defendant, as to the admissibility of it, as being immaterial, irrelevant, hearsay, and not properly authenticated, and not the best evidence.)

By Mr. Sheppard:

Q. Has your office a public seal? Have you a seal of office?

A. No, sir.

Cross Examination.

By Judge E. C. Maxwell:

Q. Mr. Chubb (this is subject to my objections and various interventions), it is a very common thing to send these patents to the patentee in care of some one else, or to some other party than the patentee?

A. If they make the request.

Q. It is a very common thing?

A. Yes, the Clerks of Court sometimes. It is very common for Clerks of Courts when they inclose the final papers to request that the patents be sent to them.

Q. It is quite a frequent thing to send them to other people, is it not?

A. It is done some, not often; it more often goes to the patentee.

Q. The person to whom it is more frequently sent is the Clerk of Court?

A. Yes.

Q. I notice on this one page (examining docket), picked at randum, eight patents sent to Clerks of Court, and eight to third parties other than the patentees?

A. Sometimes they are sent to attorneys.

By virtue of the order appointing me Special Examiner in the said cause, to-wit: the cause of the United States vs. The J. J. McCaskill Company, the foregoing testimony was taken before me on behalf of the United States; and the defendant, by its attorney, Judge E. C. Maxwell, having announced to me that he had no other or further testimony to offer on behalf of the defendant, the said testimony, together with the exhibits referred to therein, which have been marked by me for identification, are herewith

Respectfully submitted.

F. W. MARSH,
Examiner.

43 Walton County,
State of Florida.

WILLIAM JOSIAH WARD, first being duly sworn, deposes and says: I am a citizen of the United States; 75 years of age.

Further says: I filed homestead entry No. 30230, for N. 1/2 N. E. 1/4, S. W. 1/4 N. E. 1/4 and S. E. 1/4 N. W. 1/4, Sec. 8, Tp. 1 N., R. 17 W., and put up a cabin 12x14 feet, built of pine poles. I did not complete the cabin; there is no floor to it; the gable end are not closed; the cracks between the poles are not closed; there is no door cut out of the poles to get in or out of the cabin. When I made my final proof, I did not say that I lived there continuously. I stated that my wife had not been there on account of her ill health; that I had staid there of a night and had not been away from entry more than six months at any one time. I had some bedding there and some cooking pots. The information I got was from the Clerk of the Circuit Court, James McLain, at Defuniak, Fla. He told me that if I was absent from the homestead more than six months at any one time I would lose my entry, and that I must cultivate some of the land every year or I would lose it. I do not remember how much land I said I had cultivated when I proved up; there is less than 1/2 an acre fenced, which I cultivated two years. When I made my final proof, I thought I was going to lose it, so I was poor and needed money or something to live on. My wife and myself are very old and not much able to work, and I thought if I could make my final proof of this entry, I would have a little money to take. I got money from Warren Ward, my son, who was agent for the J. J. McCaskill Co., of Freeport, Fla., to make my commutation proof. I do not know if Warren got the money from McCaskill or not, but I do know that J. J. McCaskill got the land. The agreement was that I was to have one hundred dollars clear to myself after the expenses were paid. It was understood that he, my son Warren, when he made the arrangements, was acting for the McCaskill Co. as their agent. My son Warren paid me the hundred dollars.

W. JOS. WARD.

Sworn to and subscribed before me, this 21 day of December, 1904.

ANTOINE PAUL,
Special Agent, G. L. D.

* * * * * * * *

55 Indorsed: 38-416. 29128. General Land Office. Received Jan. 4, 1905. 2492. 4-480. 1057. Antoine Paul, Special Agent G. L. O. Gainesville Fla., December 31, 1904. In the case of homestead entry No. 30230. L. O. Gainesville, Fla. Name: Wm. Josiah Ward. Tract: N. 1/2 N. E. 1/4, S. W. 1/4 N. E. 1/4, and S. E. 1/4 N. W. 1/4, Sec. 8, Tp. 1 N., R. 17 W. No. of report, 367. Recommendation setting patent aside. Date of office letter directing the investigation....., 190....

Further indorsed: Ex. "A." Filed April 6/06. F. W. Marsh, Spe. Exr.

File 29128. 4-219. Jty.
A. P. R.

Department of the Interior,
WJM. General Land Office.

Washington, D. C., July, 1905.

I, W. A. Richards, Commissioner of the General Land Office, do hereby certify that the annexed copy of the papers in Com. Cash. Entry No. 18026, dated Jany. 13, 1903, in name of William Josiah Ward for N. 2 N. E. 4, S. W. 4, N. E. 4 and S. E. 4 N. W. 4, Sec. 8, Twp. 1 N., R. 17 W., Tallahassee Meridian, Fla., is a true and literal exemplification of the originals on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

W. A. RICHARDS,
[Seal] Commissoner of the General Land Office.

56 (4-139.)

Homestead—Act of May 20, 1862.

(Revised Statutes of the United States, Section 2357.)

Excess.
Receiver's Receipt.
No. 17418.

Receiver's Office, Gaineville, Fla.

Sept. 18", 1900.

Received of William Josiah Ward the sum of ..... dollars

86 cents, being in full for . . . . . acres and 69 hundredths of N. 1/2 of N. E. 1/4, S. W. 1/4 of N. E. 1/4, and S. E. 1/4 of N. W. 1/4, Section No. 8, in Township No. 1 N. of Range No. 17 W., being excess in said tract over the area entered under the Homestead Act, per application and receipt No. 30230.

$.86.

HENRY S. CHUBB,
Receiver.

Sec. 3, Act. June 5, 1900.

Indorsed: Please file with cash 18026. No. 17418. Excess receipt. Land Office at Gainesville, Fla, Sept. 18, 1900. William Josiah Ward. Homestead application No. 30230. T. 3/277.

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57 4–137.

Receiver's Receipt, No. 30230. Application No. 30230.

Homestead.

Department of the Interior.

Receiver's Office, Gainesville, Fla.

Sept. 18, 1900.

Received of William Josiah Ward the sum of fourteen dollars—cents; being the amount of fee and compensation of Register and Receiver for the entry of N. 1/2 of N. E. 1/4, S. W. 1/4 of N. E. 1/4, and S. E. 1/4 of N. W. 1/4, of Section 8, in Township 1 N., of Range 17 W., under Section No. 2290, Revised Statutes of the United States.

HENRY S. CHUBB,
Receiver.

$14.00.

Note.—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the said

five years, he must file proof of his actual settlement and cultivation, failing to do which his entry will be canceled. If the settler does not wish to remain five years on his tract, he can, at any time after fourteen months, pay for it with cash or land warrants, upon making proof of settlement and of residence and cultivation from date of filing affidavit to the time of payment.

Sec. 3, Act. June 5, 1900.

[On margin in red ink:]
See note in red ink, which Registers and Receivers will read and explain thoroughly to persons making application for lands where the affidavit is made before either of them.

Timber land embraced in a homestead, or other entry not consummated, may be cleared in order to cultivate the land, and improve the premises, but for no other purpose.

If, after clearing the land for cultivation, there remains more timber than is required for improvement, there is no objection to the settler disposing of the same. But the question whether the land is being cleared of its timber for legitimate purposes is a question of fact which is liable to be raised at any time. If the timber is cut and removed for any other purpose, it will subject the entry to cancellation, and the person who cut it will be liable to civil suit for the recovery of the value of said timber, and also to criminal prosecution under Section 2461 of the Revised Statutes.

58

c
1-2-03. 4-137. Cash 18026.
Ck.-20110. 160.69

Receiver's Receipt. No. 30230

Application No. 30230.

Homestead.

Receiver's Office, Gainesville, Fla.,
Sept. 18th, 1900.

Received of William Josiah Ward, the sum of fourteen dollars ..... cents—being the amount of fee and compensation of register and receiver for the entry of N 1/2 of NE

1/4, SW 1/4 of NE 1/4 and SE 1/4 of NW 1/4, of Section 8, in Township 1, N. of Range 17, W., under Section No. 2290. Revised Statutes of the United States.

HENRY S. CHUBB,
Receiver.

$14.00.

Note—It is required of the homestead settler, that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the said five years, he must file proof of his actual settlement and cultivation, failing to do which, his entry will be cancelled. If the settler does not wish to remain five years on his tract, he can at any time after fourteen months pay for it with cash or land warrants, upon making proof of the settlement and of residence and cultivation from date of filing affidavit to the time of payment.

o 6-012.
Sec. 3, Act June 5, 1900.

Indorsed further: See note in red ink, which registers and receivers will read and explain thoroughly to persons making application for lands where the affidavit is made before either of them.

Indorsed further: Timber land embraced in a homestead, or either entry not consummated, may be cleared in order to cultivate the land and improve the premises, but for no other purpose.

If, after clearing the land for cultivation, there remains more timber than is required for improvement, there is no objection to the settler disposing of the same. But the question whether the land is being cleared of its timber for legitimate purposes is a question of fact which is liable to be raised at any time. If the timber is cut and removed for any other purpose, it will subject the entry to cancellation, and the person who cut it will be liable to civil suit for recovery of the value of said timber, and also to criminal prosecution under Section 2461, of the Revised Statutes.

4-063

59 HOMESTEAD AFFIDAVIT.

Department of the Interior,

United States Land Office.

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.....190...

I, William Josiah Ward, of Walton County, Florida, having filed my application No. 30230, for an entry under Section 2289, Revised Statutes of the United States, do solemnly swear that I am not the proprietor of more than one hundred and sixty acres of land in any state or territory; that I am* over 21 years of age, and a native born citizen of the United States, and am unable to appear at the District Land Office, at Gainesville, Fla., to make my application on account of the great distance and lack of funds; that my said application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons or corporation, and that I will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence and cultivation necessary to acquire title to the land applied for; that I am not acting as agent of any person, corporation or syndicate in making such entry, nor in collusion with any person, corporation or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon: that I do not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for myself, and that I have not directly or indirectly made, and will not make any agreement or contract in any way or manner, with any person or persons, corporation or syndicate whatsoever, by which the title which I might acquire from the government of the United States should inure, in whole or in part, to the benefit of any person except myself, and further, that since August 30, 1890, I have not acquired title to, nor am I now claiming under any of the agricultural public land laws an amount of land, which together with the land now applied for, will exceed in the aggregate three hundred and twenty acres, except No. 25088, and that I have not heretofore made any entry under the homestead laws, except an entry for W 1/2 of SW 1/4 Sec. 13, & E 1/2 of SE 1/4,

Sec. 14 Tp. 2 S., R. 18, W., which I relinquished to the U. S. government prior to June 5th, 1900, & some where near 3 or 4 years of age.

(Signed plainly with full Christian name.) WILLIAM JOSIAH WARD.

Sworn to and subscribed before me, this 8 day of Sept., 1900, at my office, at DeFuniak Springs, in Walton County, Florida.

[Seal] JAMES A. McLEAN, Clerk Circuit Court.

*Here insert statement that affiant is a citizen of the United States, or that he has filed his declaration of intention to become such, and that he is the head of a family, or is over twenty-one years of age, as the case may be. It should be stated whether applicant is native born or not, and if not, a certified copy of his certificate of naturalization or declaration of intention, as the case may be, must be furnished. (See page 78, circular of January 25, 1904).

4-007.

9-13-00.
c-14-86.

Application No. 30230.

60 HOMESTEAD.

Department of the Interior.

United States Land Office,

Gainesville, Fla.,
Sept. 18, 1900.

I, William Josiah Ward, of Walton County, Florida, do hereby apply to enter, under Section 2289, Revised Statutes of the United States, the N 1/2 of NE 1/4, SW 1/4 of NE 1/4, SE 1/4 NW 1/4, of Section 8, in Township 1, N. of Range 17, W., containing 160.69 acres.

WILLIAM JOSIAH WARD.

United States Land Office.

Gainesville, Fla.,
Sept. 18, 1900.

I, W. G. Robinson, register of the Land Office, do hereby

certify that the above application is for surveyed lands of the class which the applicant is legally entitled to enter under Section 2289, Revised Statutes of the United States, and that there is no prior valid adverse right to the same.

Sec. 3, Act June 5, 1900.

W. G. ROBINSON,
Register.

4-062

61 NON-MINERAL AFFIDAVIT.

This affidavit can be sworn to only on personal knowledge, and cannot be made on information and belief.

The Non-Mineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

Department of the Interior,

United States Land Office.

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....., 190...

William Josiah Ward, being duly sworn according to law, deposes and says that he is the identical William Josiah Ward, who is an applicant for government title to the N 1/2 of NE 1/4, SW 1/4 of NE 1/4 and SE 1/4 of NW 1/4 Sec. 8, Tp. 1, N. R. 17, W.; that he is well acquainted with the character of said described land and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, phosphate or other valuable mineral deposit; that the land contains no salt spring or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion

of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; that the said land is not occupied and improved by any Indian, and that his post-office address is Freeport, Fla.

WILLIAM JOSIAH WARD.

I, hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally know (or has been satisfactorily identified before me by .....), and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in DeFuniak Springs, within the Gainesville, Fla., land district, on this 8th day of Sept., 1900, at 1:30 o'clock P. M.

[Seal]

JAMES A. McLEAN,
Clerk Circuit Court.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer or person in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any Court of the United States, until such time as the judgment against him is reversed. (See Sec. 1750).

4-369

62 HOMESTEAD PROOF—TESTIMONY OF WITNESS.

Levi Miller, being called as witness in support of the homestead entry of William Josiah Ward, for N 1/2 of NE 1/4, SW 1/4 of NE 1/4, SE 1/4 of NW 1/4, Sec. 8, T. 1, N. R. 17, W., testifies as follows:

Ques. 1. What is your name, age and post-office address?

Ans. Levi Miller, 35 years, Freeport, Fla.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. Yes.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. No.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal or mineral land?

Ans. Low piney woods land, very wet in rainy seasons.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. About the 9th day of Mar. 1901.

.....

.....

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact).

Ans. I don't think they have continuously, I have seen them absent from it a time or two.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and, if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. I have known of their being absent a time or two, but he has not been off of it over 3 mo's at the longest period. His wife is very feeble and the land is so low and wet, that on account of her health as well as to make a support he was compelled to be absent, I presume he has been on it nearly every week.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About 1/2 acre for 2 years.

Ques. 9. What improvements are on the land, and what is their value?

Ans. Small house & garden worth about $40 or $50.00.

. . . . . .

Ques. 10. Are there any indications of coal, salines or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes).

Ans. Not that I know of.

Ques. 11. Has the claimant mortgaged, sold or contracted to sell any portion of said homestead?

Ans. Not that I know of.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. No; yes.

(Signed plainly with full Christian name). LEVI MILLER.

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me, this 29th day of December, 1902, at my office, at DeFuniak Springs, in Walton County, Fla., and that the Judge of the Circuit Court was absent on this day.

[See note on fourth page]

[Seal] JAMES A. McLEAN,
Clerk Circuit Court.

(The testimony of witnesses must be taken at the same time and place, and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land or otherwise.)

4-369.

HOMESTEAD PROOF—TESTIMONY OF WITNESS.

George Miller being called as witness in support of the homestead entry of William Josiah Ward for N 1/2 of NE 1/4, SW 1/4 of NE 1/4, SE 1/4 of NW 1/4, S. 8, T. 1, N., R. 17, W., testifies as follows:

Ques. 1. What is your name, age and post-office address?

George Miller; 29 years; Freeport, Fla.

Ques. 2 Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. Yes.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. No.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal or mineral land?

Ans. Low, piney woods land.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. Along about the 9th or 10th of Mar., 1901.

.. ..

.. ..

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. I cannot say whether continuous or not, have not been there all the time they were there every time I have been there, but on one or two occasions had seen them off the land.

.. ..

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and, if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. I don't know exactly how long, but am satisfied they have not been absent over six months at the longest for the purpose of making a support, and on account of the land being so low and wet and unfit for cultivation.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. He has had about 1/2 acre for 2 seasons.

Ques. 9. What improvements are on the land, and what is their value?

Ans. One house and garden all worth $40 or $50.

.. ..

Ques. 10. Are there any indications of coal, salines or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes).

Ans. Not that I know of.

Ques. 11. Has the claimant mortgaged, sold or contracted to sell any portion of said homestead?

Ans. Not that I know of.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. No; yes, I think he has.

(Signed plainly with full Christian name). GEO. MILLER.

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me, this 29th day of December, 1902, at my office at DeFuniak Springs, in Walton County, Florida, & that the Judge of the Circuit Court was absent on this day.

[See note on fourth page.]

JAMES A. McLEAN,
Clerk, Circuit Court.

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

4-369

63 HOMESTEAD PROOF—TESTIMONY OF CLAIMANT.

William Josiah Ward, being called as a witness in his own behalf in support of homestead entry, No. 30230, for N 1/2 of NE 1/4, SW 1/4 of NE 1/4, SE 1/4 of NW 1/4, Sec 8, T., N. R. 17, W., testifies as follows:

Ques. 1. What is your name, age and post-office address?

Ans. William Josiah Ward, 72 years; Freeport, Fla.

. . . . . .

Ques. 2. Are you a native-born citizen of the United States, and if so, in what territory were you born?*

Ans. Yes, was born in State of Alabama.

Ques. 3. Are you the identical person who made homestead entry, No. 30230, at the Gainesville, Fla., Land Office on the 18th day of Sept., 1900, and what is the true description of the land now claimed by you?

Ans. I am. It is the N 1/2 of NE 1/4, SW 1/4 of NE 1/4 SE 1/4 of NW 1/4, Sec. 8, T. 1, N. R. 17, W.

Ques. 4. When was your house built on the land and when did you establish actual residence therein? (Describe said house and other improvements which you have placed on the land, giving total value thereof).

Ans. About 10th day of Mar., 1901. Small dwelling house and garden of about 1/2 acre, all worth about $40.00.

. . . . . .

Ques. 5. Of whom does your family consist; and have you and your family resided continuously on the land since first establishing residence thereon? (If unmarried, state the fact.)

Ans. Myself and wife. No not continuously that is not every day and night.

. . . . . .

Ques. 6. For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and, if temporarily absent, did your family reside upon and cultivate the land during such absence?

Ans. Was absent 2 or 3 times, not over 3 mos. at longest period on account of my wife's health, she is very feeble, and the land is so low and wet, that is was impossible to keep her on the place all the time.

Ques. 7. How much of the land have you cultivated each season, and for how many seasons have you raised crops thereon?

Ans. About 1/2 acre, for 2 seasons.

Ques. 8. Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade and business?

Ans. No.

Ques. 9. What is the character of the land? Is it timber, mountainous, prairie, grazing or ordinary agricultural land? State its kind and quality, and for what purpose it is most valuable?

Ans. It is low piney woods land, too wet for cultivation, has pine timber on it, and I presume is most valuable for a range.

Ques. 10. Are there any indications of coal, salines or mineral of any kind on the land? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes).

Ans. Not that I know of.

Ques. 11. Have you ever made any other homestead entry? (If so, describe the same).

Ans. I made an entry once for W 1/2 of SW 1/4, Sec. 13, & E 1/2 of SE 1/4, Sec. 14, T. 2, S R. 18, W., which I relinquished back to U. S. on account of its being claimed for state to which it afterwards obtained title.

Ques. 12 Have you sold, conveyed or mortgaged any portion of the land; and, if so, to whom and for what purpose?

Ans. None.

Ques. 13. Have you any personal property of any kind elsewhere than on this claim? (If so, describe the same, and state where the same is kept).

Ans. None, except live stock that run at large.

. . . . . .

Ques. 14. Describe by legal sub-divisions, or by number, kind of entry and office where made, any other entry or filing (not mineral), made by you since August 30, 1890.

Ans. Have not entered any other except the entry I relinquished, viz: W 1/2 of SW 1/4, Sec. 13, & E 1/2 of SE 1/4, Sec. 14, T. 2, S. R. 18, W.

(Signed plainly with full Christian name).

[Seal] WILLIAM JOSIAH WARD.

*(In case the party is of foreign birth, a certified transcript from the Court records of his declaration of intention to become a citizen, or of his naturalization, or a copy thereof, certified by the officer taking this proof, must be filed with the case. Evidence of naturalization is only required in final (five-year) homestead cases).

6-577

I hereby certify that the foregoing testimony was read to the claimant before being subscribed, and was sworn to before me, this 29th day of December, 1902, at my office at DeFuniak Spgs., in Walton County, Fla., & that the Judge of the Circuit Court was absent on this day.

[See note below.]

JAMES A. McLEAN,
Clerk, Circuit Court.

Note.—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer or person in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonement at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States, until such time as the judgment against him is reversed. (See Sec. 1750.)

Final Affidavit Required of Homestead Claimants.

Section ..... of the Revised Statutes of the United States.

I William Josiah Ward, having made a homestead entry of the N 1/2 of NE 1/4 SW 1/4 of NE 1/4 and SE 1/4 of NW 1/4, Section No. 8, in Township No. 1, N. of Range No. 17 W., subject to entry at G., under Section 2289 of the Revised Statutes of the United States, do now apply to perfect my claim thereto by virtue of Section No..... of the Revised Statutes of the United States; and for that purpose do solemnly ..... that I .... a citizen of the United States; that I have made actual settlement upon and have cultivated and resided upon said land since the ..... day of....., 18. ...., to the present time; that no part of said land has been alienated, except as provided in Section 2288, of the Revised Statutes, but that I am the sole bona fide owner as an actual settler; that I will bear true allegiance to the government of the United States; and, further, that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States, except.....

(Signed plainly with full Christian name.)

.....

I, ..., of ..... do hereby certify that the above affidavit was subscribed and sworn to before me, this ..... day of .....,

190....., at my office, at ..... in ..... County, ...

.....

.....

[Indorsed:] 4-369. Homestead Proof. Land Office at..... Original Application No. 30230. Final Certificate No. 18026. Approved. W. G. Robinson, Register; Henry S. Chubb, Receiver.

4-069.

64 [To be used in cases of commuted homestead entries. For taking the testimony of Claimant and his witnesses in making commutation proof, use the prescribed forms for "Homestead Proof."]

AFFIDAVIT REQUIRED OF CLAIMANT.

(Section 2301 of the Revised Statutes of the United States).

I, William Josiah Ward, claiming the right to commute, under Section 2301, of the Revised Statutes of the United States, my homestead entry No. 30230, made upon the N 1/2 of NE 1/4, SW 1/4 of NE 1/4 & SE 1/4 of NW 1/4, Section 8, Township 1, North, Range 17, West, do solemnly swear that I made settlement upon said land on the 10th day of March, 1901, and that on such date, to-wit, on the 10th day of March, 1901, I have built a house on said land, and have continued to reside therein up to the present time; that I have broken and cultivated 1/2 acres of said land, and that no part of said land has been alienated, except as provided in Section 2288, of the Revised Statutes, but that I am the sole bona fide owner as an actual settler.

I further swear that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States, except W 1/2 of SW 1/4, of Sec. 13, & E 1/2 of SE 1/4 of Sec. 14, T. 2, S. R. 18, W.

(Signed plainly with full Christian name). WILLIAM JOSIAH WARD.

Subscribed and sworn to before me, this 29th day of December, 1902, at my office, at DeFuniak Springs, in Walton County, Florida.

[Seal] JAMES A. McLEAN,
Clerk Circuit Court.

4-131

65 No. 18026.

Receiver's Office at Gainesville, Fla.,
Jan'y 13th, 1903.

Received from William Josiah Ward, of Freeport, of Walton, County, Florida, the sum of two hundred dollars and..... cents; being in full for the N 1/2 of NE 1/4, SW 1/2 of NE 1/4 and SE 1/4 of NW 1/4, quarter of Section No. 8, in Township No. 1, North, of Range No. 17, West, containing 169 acres and 69 hundredths, at $1.25 per acre.

HENRY S. CHUBB,
Receiver.

$200.00

$1.10 testimony fee received. Number of written words, 735, rate per 100 words, 15 cents.

Com. Hd. No. 30230.

4-189

66 No. 18026.

Land Office at Gainesville, Fla.,
January 13th, 1903.

It is hereby certified, that in pursuance of law, William Josiah Ward, residing at Freeport, in Walton County, State of Florida, on this day purchased of the Register of this office, the north half of northeast quarter, southwest quarter of northeast quarter, and southeast quarter of northwest quarter of Section No. 8, in Township No. 1, North, of Range No. 17, West, of the Talla principal meridian, Florida, containing 160.69 acres, at the rate of one dollar and 25 cents per acre, amounting to two hundred dollars and ..... cents, for which the said William Josiah Ward has made payment in full as required by law.

Now, therefore, be it know, that on presentation of this certificate to the Commissioner of the General Land Office, the said William Josiah Ward shall be entitled to receive a patent for the lot above described.

W. G. ROBINSON,
Register.

Com. Hd. No. 30230.

4-227

67 CERTIFICATE AS TO POSTING OF NOTICE.

Department of the Interior.

United States Land Office.

At Gainesville, Fla.,
Jan'y 13, 1903.

I, W. G. Robinson, Register, do hereby certify that a notice, a printed copy of which is hereto attached, was by me posted in a conspicuous place in my office for a period of thirty days, I having first posted said notice on the 24th day of Nov., 1902.

[Seal] W. G. ROBINSON,
Register.

4-348

68 No. 1.—HOMESTEAD.

W
11-18-02.
Ed. fee paid.

Land Office, Gainesville, Fla.,
Nov. 24, 1902.

I, William Josiah Ward, of Freeport, Fla., who made homestead application No. 30230, for the N 1/2 of NE 1/4, SW 1/4 of NE 1/4 & SE 1/4 of NW 1/4, Sec. 8, T. 1, N. R. 17, W., do hereby give notice of my intention to make final proof to establish my claim to the land above described, and that I expect to prove my residence and cultivation before clerk, Circuit Court, at DeFuniak Spgs., Fla., on Dec. 29, 1902, by two of the following witnesses:

Levi, Miller, of Freeport, Fla.
George Miller, of Freeport, Fla.
William Ward, of Freeport, Fla.
E. L. Carrington, of DeFuniak Springs, Fla.

(Signature of Claimant.) WILLIAM JOSIAH WARD.

Land Office at Gainesville, Fla.,
Nov. 24, 1902.

Notice of the above application will be published in the

Breeze printed at DeFuniak Springs, Fla., which I hereby designate as the newspaper published nearest the land described in said application.

W. G. ROBINSON,
Register.

Notice to Claimant.—Give time and place of proving up and name the title of the officer before whom proof is to be made; also give names and post-office address of four neighbors, two of whom must appear as your witnesses.

69 Notice for Publication.

Land Office at Gainesville, Fla.
Nov. 24, 1902.

Notice is hereby given that the following named settler has filed notice of his intention to make final proof in support of his claim, and that said proof will be made before the clerk of the Circuit Court, at DeFuniak Springs, Fla., on December 29, 1902, viz: William Josiah Ward, of Freeport, Fla., Hd. 30230, for the N 1/2 of NE 1/4, SW 1/4 of NE 1/4 and SE 1/4 of NW 1/4, Sec. 8, Tp. 1, N., R. 17, W.

He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz:

Levo, Miller, George Miller, William Ward, of Freeport, Fla.; E. L. Carrington, of DeFuniak Springs, Fla.

W. G. ROBINSON,
Register.

Ed. fee paid.

State of Florida,
Walton County.

Personally came and appeared before me, R. W. Storrs, publisher of the Breeze, a weekly newspaper published in and for said county, who being duly sworn, deposes and says that the attached notice was published in said paper for the six weeks next preceding date of proof.

R. W. STORRS.

Sworn to and subscribed before me, this 29th day of Dec., 1902.

[Seal] JAMES A. McLEAN,
Clerk, Circuit Court.

4-062

70 NON-MINERAL AFFIDAVIT.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Non-Mineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

Department of the Interior,

United States Land Office.

.....

.....190...

William Josiah Ward, being duly sworn according to law, deposes and says that he is the identical William Josiah Ward, who is an applicant for government title to the N 1/2 of NE 1/4 SW 1/4 of NE 1/4, and SE 1/4 of NW 1/4, Sec. 8, T. 1, N R 17, W.; that he is well acquainted with the character of said described land and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, phosphate or other valuable mineral deposit; that the land contains no salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; that the said land is not occupied and improved by any Indian, and that his post-office address is Freeport, Fla.

WILLIAH JOSIAH WARD.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by .....), and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me, at my office, in DeFuniak Spgs., within the Gainesville, Fla., land district, on this 29th day of Dec., 1902.

[Seal] JAMES A. McLEAN,
Clerk, Circuit Court.

Note.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX.—Crimes. Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer or person in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty or perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States, until such time as the judgment against him is reversed. (See Sec. 1750).

Indorsed: 2492 Department of Interior. Received July 25, 1905. L & RR. Div. Further filed; Ex. "B," fil. Apl. 6/06, F. W. Marsh, Spl. Exr."

4-406

71 CERTIFICATE No. 18026.

The United States of America.

To all to whom these presents shall come.—Greeting:

Whereas, William Josiah Ward, of Walton County, Florida, has deposited in the General Land Office of the United States, a certificate of the register of the Land Office, at Gainesville, Florida, whereby it appears that full payment has been made by the said William Josiah Ward, according to the provisions of the Act of Congress, of the 24th of April, 1820, entitled, "An Act making further provision for the sale of public lands," and the Acts supplemental thereto, for the north half of the northeast quarter, the southwest quarter of the northeast quarter, and the southeast quarter of the northwest quarter of Section Eight, in Township One, north of Range Seventeen, west of Tallahassee Meridian, in Florida, containing one hundred and sixty and sixty-nine hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office, by the surveyor general, which said tract has been purchased by the said William Josiah Ward.

Now, know ye, That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress, in such case made and provided, have given and granted, and by these presents, do give and grant, unto the said William Josiah Ward and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature, thereunto belonging unto the said William Josiah Ward and to his heirs and assigns forever.

In testimony whereof, I Theodore Roosevelt, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the third day of June, in the year of our Lard, one thousand nine hundred and three, and of the Independence of the United States, one hundred and twenty-seventh.

By the President:

T. ROOSEVELT.

[Seal] By F. M. McKEAN,
Secretary.

C. H. BUSH,
Recorder of the General Land Office.

Recorded, Florida, Vol. 30, Page 327.

72 Indorsed: Freeport.

Filed for record, this 7th day of Sept., A. D. 1903, at 8 o'clock A. M., and recorded in Vol. 15, at Page 517, of deeds and record verified.

[Seal] JAMES A. McLEAN,
Clerk, Circuit Court,
Walton County Florida.

Indorsed further: Ex. "D," fil. Apl. 6/06. F. W. Marsh, Special Exar.

73 WARRANTY DEED.

State of Florida,
County of Walton.

Know all men by these presents, That William Josiah Ward & Apsabeth Ward, his wife, both of Freeport, Fla., for and in consideration of four hundred twenty-five ($425.00) dollars, the receipt whereof is hereby acknowledged, do bargain, sell, convey and grant unto J. J. McCaskill, his heirs, executors, administrators and assigns forever, the following described property, to-wit: N 1/2 of the NE 1/4, the SW 1/4 of the NE 1/4 & the SE 1/4 of NW 1/4 of Section Eight (8), in Township One (1), north of Range Seventeen (17), west of Tallahassee Meridian, in Florida, containing one hundred & sixty (160) acres and 69/100 of an acre.

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Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, free from all exemptions and right of homestead. And we covenant that we are well seized of said property, and have a good right to convey the same; that it is free of encumbrance, and that we, our heirs, executors and administrators, the said grantee his heirs, executors, administrators and assigns, in the quiet and peaceful possession and enjoyment thereof, against all persons lawfully claiming the same, shall and will forever warrant and defend.

In witness whereof, we have hereunto set our hands and seals, this 4th day of Sept., A. D. 1903.

[Seal] W. JOE WARD.
[Seal] APSY WARD.
[Seal] .....
[Seal] .....

Signed, sealed and delivered in presence of
[Seal] J. N. BLACKMAN.
[Seal] J. C. WARD.

State of Florida,
Walton County.

Before the subscriber personally appeared William Josiah Ward and Apsabeth Ward, known to me to be the individuals described, and acknowledged that they executed the foregoing instrument for the uses and purposes therein set forth. And the said Apsabeth Ward, wife of the said William Josiah Ward, on a private examination by me, held separate and apart from her husband, acknowledged and declared that she executed the same freely and voluntarily, and without fear, apprehension, compulsion or constraint of or from her husband, and for the purpose of renouncing, relinquishing and conveying all her right of whatsoever kind in and to the said property.

Given under my hand and official seal, this 4th day of Sept., A. D. 1903.

[Seal] J. W. WARD, N. P.

My commission expires 4th day of June, 1907.

[Indorsed:] State of Florida .....County. To .... Warranty Deed. Received this 8th day of Sept., A. D. 1903, at 8 o'clock A. M., and recorded in Volume 15, page 440, and record verified, this 8th day of Sept., 1903. [Seal] James A. McLean, Clerk, Circuit Court. Fee, $.... Care of J. J. McC.

Indorsed further: Ex. "C" filed Apl. 6/06. F. W. Marsh, Spl. Exr.

74

THE J. J. McCASKILL Co., Inc.
Successors to J. J. McCaskill & Co.

J. J. McCaskill, Pres.
Nimrod McGuire,
V. President.
R. E. L. McCaskill,
Sec'y & Treas

Directors:
J. J. McCaskill.
R. E. L. McCaskill.
N. McGuire.
J. J. McCaskill, Jr.

Capital Stock Fully Paid $150,000.00.

"Cypress Lumber a Specialty"

Manufacturers of Naval Stores, Florida Pine and Cypress Lumber and Shingles.

Jobbers of all Kinds of Merchandise.

Vessels Loaded for all Atlantic Ports.

Shipping Point, Pensacola, Fla.

Operators of Shipyard Point—Jolly Bay and Portland Mills.

Freeport, Fla., 12/13/04.

Mr. W. G. Robinson,
Gainesville, Fla.

Dear Sir:

The following named persons have left their receipts with us, and desire deeds when issued to come to our care.

Geo. W. Miller, Entry #19148.
Jesse Josiah Ward, Entry #19022.
Lewis G. Ward, Entry #18531.

Yours truly,
THE J. J. McCASKILL CO.

(J. J. McC.)

Indorsed: Chubb Ex. "A," filed May 11/06, F. W. M., S. Ex.

75

THE J. J. McCASKILL CO., Inc.
Successors to J. J. McCaskill & Co.

J. J. McCaskill, Pres.
Nimrod McGuire,
V. President.
R. E. L. McCaskill,
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Shipping Point, Pensacola, Fla.

Operators of Shipyard Point—Jolly Bay and Portland Mills.

Freeport, Fla., 5/8/05.

Mr. W. G. Robinson,
Gainesville, Fla.

Dear Sir:

On April 5th, we wrote you, asking if you had patent in favor of Louis G. Ward, Receiver's Receipt No. 13531, covering the S 1/2 of S 1/2 of Section 28, Tp. 1, N. R. 17, W.

You replied on bottom of our letter, "Patent on file." We therefore enclose the Receipt No. 13531. As soon as deed has been executed, please forward same to us, and oblige,

Yours truly,
THE J. J. McCASKILL CO.
By J. J. McCASKILL, President.

(J. J. McC.)

Indorsed: Patent mailed 5/25/05.
Further Indorsed: Chubb "B," F. W. M., S. Ex. Filed May 11, 06.

76

THE J. J. McCASKILL, CO Inc.
Successors to J. J. McCaskill & Co.

J. J. McCaskill, Pres.
Nimrod McGuire,
V. President.
R. E. L. McCaskill,
Sec'y & Treas

Directors:
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Vessels Loaded for all Atlantic Ports.

Shipping Point, Pensacola, Fla.

Operators of Shipyard Point—Jelly Bay and Portland Mills.

Freeport, Fla., 6/29/05.

Mr. W. G. Robinson,
Gainesville, Fla.

Dear Sir:

We herewith enclose Receivers Receipt No. 19079, for the S 1/2 of SW 1/4 and S 1/2 of SE 1/4, Sec. 31, T. 1, N. R. 17, W., in favor of Jasper Ward.

Please forward deeds to us as requested by him.

Yours truly,
THE J. J. McCASKILL CO.
By J. J. McCASKILL, President.

(J. J. McC.)

Indorsed: Com. Hd. 32122. Mailed 7/29/05.
Indorsed further: Chubb "E," F. W. M., S. Ex. Filed May 11, 1906.

77

THE J. J. McCASKILL CO., Inc.
Successors to J. J. McCaskill & Co.

J. J. McCaskill, Pres.
Nimrod McGuire,
V. President.
R. E. L. McCaskill,
Sec'y & Treas

Directors:
J. J. McCaskill.
R. E. L. McCaskill.
N. McGuire.
J. J. McCaskill, Jr.

Capital Stock Fully Paid $150,000.00.

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Jobbers of all Kinds of Merchandise.

Vessels Loaded for all Atlantic Ports.

Shipping Point, Pensacola, Fla.

Operators of Shipyard Point—Jolly Bay and Portland Mills.

Freeport, Fla., August 10, 1905.

Mr. W. G. Robinson,
Receiver of the U. S. Land Office,
Gainesville, Fla.

Dear Sir:
Enclosed please find receiver's receipt 17591, for homestead entry for Willie Andress, which he requests you to forward in our care.

Yours truly,
THE J. J. McCASKILL CO.
WILSON.

WW.

Indorsed: Chubb Ex. "D." F. W. M. Filed May 11/06.

78

THE J. J. McCASKILL CO., Inc.
Successors to J. J. McCaskill & Co.

J. J. McCaskill, Pres.
Nimrod McGuire,
V. President.
R. E. L. McCaskill,
Sec'y & Treas

Directors:
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R. E. L. McCaskill.
N. McGuire.
J. J. McCaskill, Jr.

Capital Stock Fully Paid $150,000.00.

"Cypress Lumber a Specialty"

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Jobbers of all Kinds of Merchandise.

Vessels Loaded for all Atlantic Ports.

Shipping Point, Pensacola, Fla.

Operators of Shipyard Point—Jolly Bay and Portland Mills.

Freeport, Fla., Dec. 25th, 05.

Mr. W. G. Robinson,
Gainesville, Fla.

Dear Sir:

We herewith enclose receiver's receipt in favor of Henry Boon, No. 19707.

Please mail deed to him in our care.

Yours truly,
J. J. McCASKILL CO.

Indorsed: Commutation Proof.
Further Indorsed: Clubb "E," F. W. M., S. Ex. Filed May, 11/06.

79

THE J. J. McCASKILL CO., Inc.
Successors to J. J. McCaskill & Co.

J. J. McCaskill, Pres.
Nimrod McGuire,
V. President.
R. E. L. McCaskill,
Sec'y & Treas

Directors:
J. J. McCaskill.
R. E. L. McCaskill.
N. McGuire.
J. J. McCaskill, Jr.

Capital Stock Fully Paid $150,000.00.

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Shipping Point, Pensacola, Fla.

Operators of Shipyard Point—Jolly Bay and Portland Mills.

Freeport, Fla., 4/5/05.

Mr. W. G. Robinson,
Gainesville, Fla.

Dear Sir:

We have yours of Mar. 28th, and note that patent had just been received at your office, but had not been posted on your records, but that we could return the receipt. We herewith return same in favor of Jesse Josiah Vard, for homestead entry No 19022.

Yours truly,
THE J. J. McCASKILL CO.
By J. J. McCASKILL, President.

(J. J. McC.)

Indorsed: Jesse Josiah Ward.
Further Indorsed: Chubb Ex. "F," F. W. M., S. Ex.
Filed May, 11/06

Department of the Interior.

United States Land Office.

Gainesville, Florida, April 19, 1906.

Date of Patent	Patentee	Description	Sec.	T.	R.	Disposition of Patent
Aug. 16, 1904	Cora Miller	SE. 1/4 SE. 1/4, W. 1/2 SE. 1/4,	8	1 N.	17 W.	J. J. McCaskill Co., Freeport, Fla., Oct. 17, 1904.
May 5, 1905	Geo. W. Miller	NE. 1/4	29	1 N.	17 W.	J. J. McCaskill Co., Freeport, Fla., Dec. 20, 1905.
Aug. 16, 1904	Louis G. Ward	S. 1/2 SE. 1/4	28	1 N.	17 W.	J. J. McCaskill Co., Freeport, Fla., May 25, 1905.
Mch. 11, 1904	Jesse J. Ward	S. 1/2 SW. 1/4, NE. 1/4 SW. 1/4, NW. 1/4 SE. 1/4,	36	1 N.	18 W.	J. J. McCaskill Co., April 11, 1905.

Apr. 17,1904	Jasper Ward	S. 1/2 SE. 1/4, S. 1/2 SW. 1/4,	31	1 N.	17 W.	J. J. McCaskill Co., July 29, 1905, upon request.
June 3, 1903	William J. Ward	N. 1/2 NE. 1/4, SW. 1/4 NE. 1/4, SW. 1/4 NE. 1/4, SE. 1/4 NW. 1/4,	8	1 N.	17 W.	J. J. McCaskill Co., Aug. 26, 1903.
Dec. 30, 1905	William J. Ward, Jr.	S. 1/2 SW. 1/4	22	1 N.	17 W.	Patentee.
Oct. 19, 1905	Jas. N. Valckman,	N. 1/2 NE. 1/4, SW. 1/4 NE. 1/4, SE. 1/4 NW. 1/4,	10	1 N.	17 W.	"
April 9, 1901	Zacharia W. Nelson	SW. 1/4,	30	1 S.	18 W.	"
Aug. 17, 1903	John Pate	SE. 1/4 NW. 1/4, NE. 1/4 SW. 1/4,	18	1 N.	17 W.	"
May 16, 1898	John Crosby	W. 1/2 NE. 1/4, SE. 1/4 NW. 1/4, NE. 1/4 SW. 1/4,	6	1 N.	18 W.	"
June 27, 1903	R. J. Pate	S. 1/2 NW. 1/4, NE. 1/4 SW. 1/4,	19	1 N.	17 W.	

I hereby certify that the above abstract, showing
81 the disposition of patents received in this, office, is true and correct, as shown by patent record. Dated April 19, 1906.

HENRY S. CHUBB,
Receiver.

Indorsed: Chubb Ex. "G." F. W. M. S. Ex. Filed May 11/06.

Indorsed further: In the Circuit Court of the United States for the Northern District of Florida. The United States vs. The J. J. McCaskill Co. Testimony and exhibits for complainant, W. A. Ward, pages 1 to 12; J. G. Ward, 13 to 15; W. J. Ward, 16 to 25; Antoine Paul, 26 to 30; H. S. Chubb, 36 to 41. For defendant, J. J. McCaskill, 31 to 35. Filed May 11, 1906. F. W. Marsh, Clerk.

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82 State of Florida,
Walton County.

Know all men by these presents, that we, Wm. J. Ward, Jr., and Annie Ward, his wife, for and in consideration of one ($1.00) dollar and other considerations, the receipt whereof is hereby acknowledged, do bargain, sell, convey and grant unto J. J. McCaskill, of Freeport, Florida, his heirs, executors, administrators and assigns forever, the following described property, to-wit: S. 1/2 of SW. 1/4, Section 22, Township 1, N. Range 17.

Together will all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, free from all exemptions and right of homestead. And we covenant that we are well seized of said property and have a good right to convey the same; that it is free of incumbrance, and that we, our heirs, executors and administrators, the said grantee, his heirs, executors and administrators and assigns, in the quiet and peaceable possession and enjoyment thereof, against all persons lawfully claiming the same, shall and will forever warrant and defend.

In witness whereof, we have hereunto set our hands and seals, this 15 day of August, A. D. 1905.

[Seal] WM. J. WARD, JR.
[Seal] ANNIE WARD.

Signed, sealed and delivered in the presence of:
As to Wm. J. Ward, Jr.:
BESSIE M. WILSON,
WM. M. WILSON.
As to Annie Ward:
GRADY WARD,
NIMROD McGUIRE.

State of Florida,
Walton County.

Before [me], the subscriber, personally appeared Wm. J. Ward, Jr., and ....., known to me to be the individuals described, and acknowledged that he executed the foregoing instrument for the purposes therein set forth. And the said ....., wife of the said....., on a private examination, by me held, separate and apart from her husband, acknowledged and declared that she executed the same freely and voluntarily and without fear, apprehension, compulsion or restraint of or from her husband, and for the purpose of renouncing, relinquishing and conveying all her right of whatsoever kind in and to the said property. Given under my hand and official seal, this 15th day of August, A. D. 1905.

83

[L. S.] WM. M. WILSON, N. P.

My commission expires Aug. 10/08.

State of Florida,
Walton County.

Before the subscriber personally appeared ..... and Annie Ward, known to me to be the individual described, and acknowledged that she executed the foregoing instrument for the uses and purposes therein set forth. And the said Annie Ward, wife of the said Wm. J. Ward, on a private examination by me held separate and apart from her husband, acknowledged and declared that she executed the same freely and voluntarily and without fear, apprehension, compulsion or restraint of or from her husband, and for the purpose of renouncing, relinquishing and conveying all her right, of whatsoever kind, in and to the said property.

Given under my hand and official seal, this 18 day of August, A. D. 1905.

[L. S.] N. McGUIRE,
Notary Public.

My commission expires Oct. 15th, 1906.

I hereby certify that the above and foregoing is a true and

correct copy of the original, as filed for record this the 29th day of August, A. D. 1905.

JAMES A. McLEAN,
Clerk Circuit Court.
By A. G. DOUGLASS,
Deputy Clerk.

State of Florida,
Walton County.

I, James A. McLean, Clerk of the Circuit Court in and for said county and state, do hereby certify that the above and foregoing is a true and correct copy of deed, as appears of record in my office, in book 21, at page 213, record of deeds, together with Clerk's certificate of record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this the 12th day of April, A. D. 1906.

JAMES A. McLEAN,
Clerk Circuit Court.

[Seal]

Indorsed: Copy of deed. Court, County, State of Florida. Wm. J. Ward to J. J. McCaskill. Dated Aug. 15, A. D. 1905. Filed at 9 o'clock A. M., Apr. 14, 1906. F. W. Marsh, Master. (1)

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84 WARRANTY DEED. (Statutory.)

This indenture, made this 27th day of March, A. D. 1905, between J. N. Blackman and Mary P. Blackman, of the County of Walton, State of Florida, party of the first part, and The J. J. McCaskill Company, a corporation organized and doing business under the laws of the State of Florida, of the County of Walton, State of Florida;

Witnesseth: That the said parties of the first part, for and in consideration of the sum of five hundred dollars ($500.00) to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold to the said party of the second part, its successors and assigns forever, the following described land, to-wit: W. 2 of N. E. 4; S. W. 4 of N. E. 4; S. E. 4 of N. W. 4 of Sec. 10, Twp. 1 N., Range 17 W., except 10 acres in S. W. corner of the N. E. corner of the N. E. 1/4 of N. E. 1/4 and 10 acres in S. E. corner of S. W. 1/4 of N. E. 1/4, containing 140 acres, more or less.

And the said parties of the first part do hereby fully warrant the title to the said land and will defend the same against the lawful claims of all persons whomsoever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

[Seal] JAS. N. BLACKMAN.

[Seal] MARY P. her X mark BLACKMAN.

Signed, sealed and delivered in the presence of:
W. H. TAUNTON,
J. J. WARD.

State of Florida,
County of Walton.

This day before the undersigned personally appeared J. N. Blackman and Mary P. Blackman to me well known to be the individuals described in and who executed the foregoing instrument of writing and acknowledged that they executed the same for the uses and purposes therein expressed.

And the said Mary P. Blackman, wife of the said J. N. Blackman, upon a private examination by me held separate and apart from her husband, acknowledged and declared that she executed the same freely and voluntarily and without fear or apprehension, compulsion or constraint of or from her said husband, and for the purpose of renouncing, relinquishing and conveying all her right of whatever kind in and to said property, including her right of dower.

85

In testimony whereof I have hereunto set my hand and affixed my official seal on this the .. day of Mch. 27, A. D. 1905.

[L. S.] J. J. WARD,
Notary Public for the State of Florida.

My commission expires Sept. 8, A. D. 1903.

I hereby certify that the above and foregoing is a true and correct copy of the original as filed for record this the 28th day of April, A. D. 1905.

JAMES A. McLEAN,
Clerk Circuit Court.
By A. G. DOUGLASS,
Deputy Clerk.

State of Florida,
Walton County.

I, James A. McLean, Clerk of the Circuit Court in and for said County and State, do hereby certify that the above and foregoing is a true and correct copy of deed, as appears of record in my office, in book 21, page 59, together with the Clerk's certificate of record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this the 12th day of April, A. D. 1906.

JAMES A. McLEAN,
Clerk Circuit Court.

[Seal]

Indorsed: Copy of deed. Court, County, State of Florida. J. N. Blackman to The J. J. McCaskill Co. Dated March 27, A. D. 1905. Filed at 9 o'clock A. M., Apr. 14, 1903. F. W. Marsh, Master. (2)

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86 WARRANTY DEED.

This indenture, made this second day of July, A. D. 1904, between Jasper Ward Bruce, of the County of Walton, in the State of Florida, party of the first part, and The J. J. McCaskill Co., a corporation, chartered and doing business under the laws of the State of Florida, of the County of Walton, in the State of Florida, party of the second part:

Witnesseth: That the said party of the first part, for and in consideration of the sum of five hundred and sixty ($560.00) dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said party of the second part, its successors and assigns forever, the following described land, to-wit: S. 1/2 of S. W. 1/4 and S. 1/2 of S. E. 1/4 of Section No. 31, in Township No. 1 North of Range No. 17 West, in Walton County, State of Florida, containing 160 and 74/100 acres.

And the said party of the first part does hereby fully warrant the title to the said land, and will defend the same against the lawful claims of all persons whomsoever.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

[Seal] JASPER WARD.

Signed, sealed and delivered in presence of:
ALBERT D. KOHN,
GEORGE MANIGOLD.

State of Alabama,
County of Montgomery.

I hereby certify that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, Jasper Ward, to me well known to be the person described in and who executed the foregoing deed, and acknowledged before me that he executed the same freely and voluntarily for the purpose therein expressed.

Witness my hand and official seal, at Montgomery, County of Montgomery, and State of Alabama, this 2nd day of July, A. D. 1904.

ALBERT D. KOHN,
[L. S.] Notary Public, Montgomery County, Alabama.

87 I hereby certify that the above and foregoing is a true and correct copy of the original as filed for record, this the 14th day of July, A. D. 1904.

JAMES A. McLEAN,
Clerk Circuit Court.
By A. G. DOUGLASS,
Deputy Clerk.

State of Florida,
Walton County.

I, James A. McLean, Clerk of the Circuit Court in and for said County and State, do hereby certify that the foregoing is a true and correct copy of the deed from Jasper Ward to The J. J. McCaskill Co., as appears of record in my office in deed record No. 19, at page 176.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this the 12th day of April, A. D. 1906.

JAMES A. McLEAN,
[Seal] Clerk Circuit Court.

Indorsed: Copy of deed. Court, County, State of Florida. Jasper Ward to The J. J. McCaskill Co. Dated July 2, A. D. 1904. Filed at 9 o'clock A. M., Apr. 14, 1906. F. W. Marsh, Master. (3)

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88 WARRANTY DEED.

This indenture, made this 30th day of Aug., A. D. 1904, between George W. Miller, of Bruce, single, of the County of

Walton, in the State of Florida, party of the first part, and The J. J. McCaskill Co., a corporation, chartered and doing business under the laws of the State of Florida, of the County of Walton, in the State of Florida, party of the second part;

Witnesseth: That the said party of the first part, for and in consideration of the sum of four hundred and fifty dollars .....to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said party of the second part, its successors and assigns forever, the following described land, to-wit: The S. 1/2 of N. 1/2 and S. 1/2 of N. E. 1/4 of Section 29, Township No. 1, of Range 17 W., containing 120 acres, more or less.

And the said party of the first part does hereby fully warrant the title to the said land, and will defend the same against the lawful claims of all persons whomsoever.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

[Seal] GEORGE W. MILLER.

Signed, sealed and delivered in presence of:
WM. M. WILSON,
W. L. GEORGE.

State of Florida,
County of Walton.

I hereby certify that on this day personally appeared before me, an officer authorized to administer oaths and take acknowledgements, George L. Miller, to me well known to be the person described in and who executed the foregoing deed, and acknowledged before me that he executed the same freely and voluntarily, for the purpose therein expressed.

Witness my hand and official seal, at Freeport, County of Walton and State of Florida, this 30th day of Aug., A. D. 1904.

WM. M. WILSON,
[L. S.] N. P.
My commission expires Aug. 10, 1908.

89 I hereby certify that the above and foregoing is a true and correct copy of the original as filed for record, this the 5th day of Nov., A. D. 1904.

JAMES A. McLEAN,
Clerk Circuit Court.
By A. G. DOUGLASS,
Deputy Clerk.

State of Florida,
Walton County.

I, James A. McLean, Clerk of the Circuit Court in and for said County and State, do hereby certify that the foregoing is a true and correct copy of deed as appears of record in my office in deed book No. 18, at page 376, and that I am the custodian of said record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this the 12th day of April, A. D. 1906.

JAMES A. McLEAN,
[Seal] Clerk Circuit Court.

Indorsed: Copy of deed. George W. Miller to The J. J. McCaskill Co. Dated Aug. 30, 1904. Filed at 9 o'clock A. M., Apr. 14, 1906. F. W. Marsh, Master. (4).

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90 WARRANTY DEED.

This indenture, made this 27 day of May, A. D. 1904, between Jesse Josiah Ward and Florence Ward, wife, of the County of Walton, in the State of Florida, parties of the first part, and The J. J. McCaskill Co., a corporation charted [chartered] and doing business under the laws of the State of Florida, of the County of Walton, in the State of Florida, party of the second part;

Witnesseth: That the said parties of the first part, for and in consideration of the sum of two hundred ($200.) dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold to the said parties of the second part, its successors and assigns for ever, the following described land, to-wit: W. 1/2 of S. W. 1/4, N. E. 1/4 of S. W. 1/4, and N. W. 1/4 of S. E. 1/4 of Section 36, Tp. 1 N., R. 18 W., in Walton County, State of Florida.

And the said parties of the first part do hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

[Seal] JESSE JOSIAH WARD.
[Seal] FLORENCE WARD.

Signed, sealed and delivered in presence of us:
LUTHER FUQUAY,
JOHN BOYINGTON.

State of Florida,
Walton County.

Before the subscriber personally appeared Jesse Josiah Ward and Florence Ward, known to me to be the individuals described, and acknowledged that they executed the foregoing instrument for the uses and purposes therein set forth.

And the said Florence Ward, wife of the said Jesse Josiah Ward, on a private examination by me, held separate and apart from her husband, acknowledged and declared that she executed the same freely and voluntarily, and without fear, apprehension, compulsion or constraint of or from her husband, and for the purpose of renouncing, relinquishing and conveying all her right of whatever kind in and to the said
91 property.

Given under my hand and official seal, this 27 day of May, A. D. 1904.

[L. S.] JAMES W. WARD, N. P.

My commission expires June 4, 1907.

I hereby certify that the above and foregoing is a true and correct copy of the original as filed for record this the 25th day of February, A. D. 1905.

JAMES A. McLEAN,
Clerk Circuit Court.
By A. G. DOUGLASS,
Deputy Clerk.

State of Florida,
Walton County.

I, James A. McLean, Clerk of the Circuit Court in and for said County and State, do hereby certify that the above and foregoing is a true and correct copy of the deed from Jesse Josiah Ward to The J. J. McCaskill Co., as appears of record in deed book No. 19, at page 560, in my office.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this the 12th day of April, A. D. 1906.

JAMES A. McLEAN,
Clerk Circuit Court.

Indorsed: Copy of deed. Court. County, State of Florida. Jesse Josiah Ward to The J. J. McCaskill Co. Dated May 27, A. D. 1904. Filed at 9 o'clock A. M. Apr. 14, 1906. F. W. Marsh, Master (5).

92 WARRANTY DEED.

State of Florida,
Walton County.

Know all men by these presents: That I, Cora Miller, spinster, for and in consideration of four hundred seventy (470.00) dollars, the receipt whereof is hereby acknowledged, do bargain, sell, convey and grant unto J. J. McCaskill three-fourths (3/4) and R. E. L. McCaskill one-fourth (1/4), [their] heirs, executors, administrators and assigns forever, the following described property, to-wit: SE. 1/4 of SE. 1/4 and W. 1/2 of SE. 1/4 of Section No. 8, in Township No. 1 North, Range 17 West, containing 120 acres and 52 hundredths of an acre.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, free from all exemptions and right of homestead. And I covenant that I am well seized of said property, and have a good right to convey the same; that it is free of encumbrance, and that I and my heirs, executors and administrators, the said grantees, their heirs, executors, administrators and assigns, in the quiet and peaceful possession and enjoyment thereof against all persons lawfully claiming the same, shall and will forever warrant and defend.

In witness whereof, I have hereunto set my hand and seal, this 22nd day of December, A. D. 1903.

[Seal] her CORA X MILLER. mark.

Signed, sealed and delivered in presence of:
T. F. WARD,
GEO. N. MILLER.

My commission expires June 4, 1907.

State of Florida,
Walton County.

Before the subscriber personally appeared Cora Miller and ....., known to me to be the individual described and acknowledged that she executed the foregoing instrument for the uses and purposes therein set forth. And the said ....., wife of the said....., on a private examination by me, held separate and apart from her husband, acknowledged and declared that she executed the same freely and voluntarily, and without fear, apprehension,

compulsion or constraint of or from her husband, and for the purpose of renouncing, relinquishing and conveying all her right of whatsoever kind in and to the said property.

Given under my hand and official seal, this 22 day of Dec., A. D. 1903.

[L.S.] J. W. WARD, N. P.

My commission expires June 4, 1903.

I hereby certify that the above is a true and correct copy of the original as filed for record this 13th day of July, 1904.

JAMES A. McLEAN,
Clerk Circuit Court.

State of Florida,
Walton County.

I, James A. McLean, Clerk of the Circuit Court in and for said County and State, do hereby certify that the above and foregoing is a true and correct copy of the original, as appears on record in my office, in book No. 20, at page 116, together with the Clerk's certificate of record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this the 13th day of April, A. D. 1906.

JAMES A. McLEAN,
[Seal] Clerk Circuit Court.

Indorsed: Copy of deed. Court, County, State of Florida. Cora Miller to J. J. and R. E. L. McCaskill. Filed this dated day of Dec. 22, A. D. 1903. Filed at 9 o'clock A. M., Apr. 14, 1906. F. W. Marsh, Master. (6)

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93 WARRANTY DEED.

State of Florida,
Walton County.

Know all men by these presents: That we, John Crosby and Susan Crosby, wife, of Argyle, Fla., for and in consideration of one hundred five ($105.00) dollars, the receipt whereof is hereby acknowledged, do bargain, sell, convey and grant unto J. J. McCaskill an undivided three-fourths (3/4), and R. E. L. McCaskill an undivided one-fourth (1/4), [their] heirs, executors, administrators and assigns forever, the followling described property, to-wit: West half of the north-east quarter; the southeast quarter of the northwest quarter, and the north-

east quarter of the southwest quarter of Section 6, in Township One (1), north of Range Eighteen (18), west of Tallahassee Meridian, in Florida, containing one hundred fifty-nine (& 60/100) acres, more or less, (59.60/100) acres situate, lying and being in Walton County, Florida.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, free from all exemptions and right of homestead. And we covenant that we are well seized of said property, and have a good right to convey the same; that it is free of encumbrance, and that we, our heirs, executors and administrators, the said grantee, their heirs, executors, administrators and assigns, in the quiet and peaceful possession and enjoyment thereof, against all persons lawfully claiming the same, shall and will forever warrant and defend.

In witness whereof, we have hereunto set our hands and seals, this twenty-first day of Dec., A. D. 1903.

[L.S.] JOHN his X mark CROSBY.

[L.S.] SUSAN CROSBY.

[Seal]

[Seal]

Signed, sealed and delivered in presence of

ANNIE McDONALD.

MARY A. DOUGLASS.

State of Florida,
Walton County.

Before the subscriber personally appeared John Crosby and Susan Crosby known to me to be the individauls described, and acknowledged that they executed the foregoing instrument for the uses and purposes therein set forth. And the said Susan Crosby, wife of the said Jno. Crosby, on a private examination by me, held separate and apart from her husband, acknowledged and declared that she executed the same freely and voluntarily, and without fear, apprehension, compulsion or constraint of or from her husband, and for the purpose of renouncing, relinquishing and conveying all her right of whatsoever kind in and to the said property.

Given under my hand and official seal, this 21st day of Dec., A. D. 1903.

J. C. DOUGLAS,
Notary Public,
For State of Florida, at Large.

My commission expires May 15th, 1905.

I hereby certify that the above is a true and correct copy of the original as filed for record, this 29th day of February, 1904.

JAMES A. McLEAN,
Clerk, Circuit Court.
By A. G. DOUGLASS,
Deputy Clerk.

State of Florida,
Walton County.

I, James A. McLean, Clerk of the Circuit Court in and for said county and state, do hereby certify that the above and foregoing is a true and correct copy of deed as appears of record in my office in Book 15, page 618, together with the clerk's certificate of record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this the 13th day of April, A. D. 1906.

JAMES A. McLEAN,
Clerk, Circuit Court.

Indorsed further: Copy of deed. John Crosby to J. J. and R. E. L. McCaskill Co. Dated December 21, 1903. Filed at 9 o'clock A. M., Apr. 14, 1906. F. W. Marsh, Master. (7)

[Indorsed:] State of Florida. .....County.
.. ..
.. ..
.. ..
To. Warranty Deed. Received this ..... day of ..... A. D. 190...., at .....o'clock .....M., and recorded in Volume .. ... Page ..... and record verified, this ..... day of ..... 190.... ....., Clerk, Circuit Court. Fee, $.....

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94 WARRANTY DEED.

State of Florida,
Walton County.

Know all men by these presents, That I, Lewis G. Ward, Walton Co., Fla., for and in consideration of two hundred forty ($240.00) dollars, the receipt whereof is hereby acknowl-

edged, do bargain, sell, convey and grant unto J. J. McCaskill, 3/4 R. E. L. McCaskill 1/4, heirs, executors, administrators and assigns forever, the following described property, to-wit: The south half of the SE 1/4 of Section 28, Twp. 1, N. of Range #17, west, containing 79 86/100 acres.

.. ..
.. ..
.. ..

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, free from all exemptions and right of homestead. And I covenant that I am well seized of said property, and have a good right to convey the same; that it is free of encumbrance, and that I, my heirs, executors and administrators, the said grantee, their heirs, executors, administrators and assigns, in the quiet and peaceful possession and enjoyment thereof, against all persons lawfully claiming the same, shall and will forever warrant and defend.

In witness whereof, I have hereunto set my hand and seal, this 30th day of Nov., A. D. 1903.

[L.S.] LEWIS G. WARD.

Signed, sealed and delivered in presence of

W. A. WARD.
MARY ROBINSON.

State of Florida,
Walton County.

Before the subscriber personally appeared Lewis G. Ward, and ..... known to me to be the individual... described, and acknowledged that he executed the foregoing instrument for the uses and purposes therein set forth.

Given under my hand and official seal, this 30th day of Nov., A. D. 1903.

[L.S.] WM. M. WILSON, N. P.
My Commission Expires Aug. 11, 1904.

I hereby certify that the above is a true and correct copy of the original as filed for record this 13th day of July, 1904.

JAMES A. McLEAN,
Clerk Circuit Court.

State of Florida,
Walton County.

I, James A. McLean, Clerk of the Circuit Court in and for

said county and state, do hereby certify that the above and foregoing is a true and correct copy of deed as appears of record in my office in Deed Record No. 20, at page 115, together with the clerk's certificate of record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this the 13th day of April, A. D. 1906.

[Seal] JAMES A. McLEAN,
Clerk, Circuit Court.

Indorsed: Court. County, State of Florida. Lewis G. Ward to J. J. & R. E. L. McCaskill. Filed this dated day of Nov. 30, A. D. 1903. Filed at 9 o'clock A. M. F. W. Marsh, Master. (8)

[Indorsed:] State of Florida. .....County.
.. ..
.. ..
.. ..
To. Warranty Deed. Received this ..... day of .... A. D. 190...., at .....o'clock .....M., and recorded in Volume ..... Page ..... and record verified, this ..... day of ..... 190.... ....., Clerk, Circuit Court. Fee, $.....

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95 WARRANTY DEED.

State of Florida,
Walton County.

Know all men by these presents, That, we, Rudolph J. Pate and Nancy Jane Pate, wife, both of Freeport, Fla., for and in consideration of three hundred ($300.00) dollars, the receipt whereof is hereby acknowledged, do bargain, sell, convey and grant unto J. J. McCaskill & Co., of said Freeport, in the following manner: three-fourths (3/4) to J. J. McCaskill, & one-fourth (1/4) to R. E. L. McCaskill, heirs, executors, administrators and assigns forever, the following described property, to-wit: S 1/2 of NW 1/4 & NE 1/4 of SW 1/4 in Section 19 in Twp. No. 1, north Range No. 17, west, containing 119 90/100 acres more or less all in Walton Co., Fla.

.. ..
.. ..
.. ..

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, free from all exemptions and right of homestead. And we covenant that we are well seized of said property, and have a good right to convey the same; that it is free of encumbrance, and that we, our heirs, executors and administrators, the said grantees their heirs, executors, administrators and assigns, in the quiet and peaceful possession and enjoyment thereof, against all persons lawfully claiming the same, shall and will forever warrant and defend.

In witness whereof, we have hereunto set our hands and seals, this 30th day of Oct., A. D. 1903.

[L.S.] R. J. PATE.

[L.S.] NANCY JANE her X mark PATE.

[Seal]
[Seal]

Signed, sealed and delivered in presence of
WM. M. WILSON.
As to R. J. PATE.
J. J. McCASKILL, Jr.
J. P. RICHARDSON.
As to Sig. MRS. PATE.

State of Florida,
Walton County.

Before the subscriber personally appeared Rudolph J. Pate and Nancy Jane Pate known to me to be the individual.... described, and acknowledged that they executed the foregoing instrument for the uses and purposes therein set forth. And the said Nancy Jane Pate, wife of the said Rudolph J. Pate, on a private examination by me, held separate and apart from her husband, acknowledged and declared that she executed the same freely and voluntarily, and without fear, apprehension, compulsion or constraint of or from her husband, and for the purpose of renouncing, relinquishing and conveying all her right of whatsoever kind in and to the said property.

Given under my hand and official seal, this 30th day of Oct., A. D. 1903.

[L.S.] J. P. RICHARDSON,
My Commission Expires June 11th, 1907.

I hereby certify that the above is a true and correct copy of

the original as filed for record, this 3rd day of November, 1903.

[L.S.] JAMES A. McLEAN,
Clerk, Circuit Court.
By A. G. DOUGLASS,
Deputy Clerk.

State of Florida,
Walton County.

I, James A. McLean, Clerk of the Circuit Court in and for said county and state, do hereby certify that the above and foregoing is a true and correct copy of deed as appears of record in my office in Book No. 15, at page 475, together with the clerk's certificate of record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this the 13th day of April, A. D. 1906.

[Seal] JAMES A. McLEAN,
Clerk, Circuit Court.

Indorsed: Copy of deed. Court. County, State of Florida. Rudolph J. Pate to J. J. McCaskill & Co. Dated Oct. 30, A. D. 1903. Filed at 9 o'clock A. M., Apr. 14, 1906. F. W. Marsh, Master. (9)

[Indorsed:] State of Florida. .....County.
.. ..
.. ..
.. ..
To. Warranty Deed. Received this ..... day of .... A. D. 190.... at .....o'clock .....M., and recorded in Volume ..... Page ..... and record verified, this ..... day of ..... 190.... ....., Clerk, Circuit Court. Fee, $.....

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96 WARRANTY DEED.

State of Florida,
Walton County.

Know all men these presents, That I, C. E. Hewitt, of Freeport, Fla., for and in consideration of five hundred ($500.00) dollars, the receipt whereof is hereby acknowledged, do bargain, sell, convey and grant unto J. J. McCaskill, of Free-

port, Fla., his heirs, executors, administrators and assigns forever, the following described property, to-wit: W 1/2 of SE 1/4 of Section Thirty-four (34), Town. Two (2), north of Range Eighteen (18), west; containing eighty (80) acres more or less lying and being in Walton County, Florida.

.. ..
.. ..
.. ..

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, free from all exemptions and right of homestead. And I covenant that I am well seized of said property, and have a good right to convey the same; that it is free of encumbrance, and I, my heirs, executors and administrators, the said grantee, heirs, executors, administrators and assigns, in the quiet and peaceful possession and enjoyment thereof, against all persons lawfully claiming the same, shall and will forever warrant and defend.

In witness whereof, I have hereunto set my hand and seal, this 26th day of August A. D. 1903.

[L.S.] C. E. HEWITT.
[Seal]
[Seal]

Signed, sealed and delivered in presence of
WM. M. WILSON.
MARY ROBINSON.

State of Florida,
Walton County.

Before the subscriber personally appeared, C. E. Hewitt, and ..... known to me to be the individual ..... described, and acknowledged that he executed the foregoing instrument for the uses and purposes therein set forth.

Given under my hand and official seal, this 26th day of August, A. D. 1903.

[L.S.] WM. M. WILSON, N. P.

I hereby certify that the above is a true and correct copy of the original as filed for record, this 15th day of Oct., 1903.

[L.S.] JAMES A. McLEAN,
Clerk, Circuit Court.
By A. G. DOUGLASS,

State of Florida,
Walton County.

I, James A. McLean, Clerk of the Circuit Court in and for said county and state, do hereby certify that the above and foregoing is a true and correct copy of deed as appears of record in my office in Deed Record No. 15, at page 463, together with the clerk's certificate of record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this the 13th day of April, A. D. 1906.

[Seal] JAMES A. McLEAN,
Clerk, Circuit Court.

Indorsed: Copy of deed. Court. County, State of Florida. C. F. Hewitt to J. J. McCaskill & Co. Dated Aug. 26, A. D. 1903. Filed at 9 o'clock A. M., Apr. 14, 1906. F. W. Marsh, Master. (10)

[Indorsed:] State of Florida. .....County.
.. ..
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.. ..
To. Warranty Deed. Received this ..... day of .... A. D. 190...., at .....o'clock .....M., and recorded in Volume ..... Page ..... and record verified, this ..... day of ..... 190.... ....., Clerk, Circuit Court. Fee, $.....

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97 State of Florida.
County of Walton.

Know all men by these presents, That John Pate, Sallie Pate, party of the first part for and in consideration of the sum of thirty-five dollars to me in hand paid, the receipt whereof is hereby acknowledged, have leased, demised and let and by these presents do lease, demise and let unto J. J. McCaskill and R. E. L. McCaskill partners doing business under the firm name and style of J. J. McCaskill & Co., parties of the second part, the follow described real estate, situate, lying and being in Walton County, Florida, to-wit: The SE 1/4 of NW 1/4 and NE 1/4 of SW 1/4 of Section 18, Tp. 1, N. R. 17, west.

To have and to hold the said above leased premises unto the said parties of the second part, the heirs or assigns for the full

term or period extending from the date of the execution of these presents to the 1st day of April, 1902. And the said party of the first part, for the consideration above set forth, has this day granted, bargained and sold and by these presents do grant, bargain, sell and convey unto the said parties of the second part, their heirs and assigns, all of the pine trees now standing, growing and being in and upon the above described lands that are now, or may become during the term of the lease above set forth, suitable for making merchantable pitch pine saw logs, and the said parties of the second part shall at any time within the term of the lease above set forth have the right, without let or hindrance from the party of the first part to cut and fell the said trees and remove the same from the said lands by means of carts, wagons and trains, or in such manner as they may see fit; and shall have the right without further compensation to the party of the first part, to open up, construct and maintain through, over and across said lands by such route and such directions as they may deem proper, such roads as they may deem necessary to enable to conveniently and expeditiously to remove said timber herein conveyed, and in opening up, constructing and maintaining such roads, shall have the right, without further compensation to the party of the first part, to cut and remove such smaller growth on such lands as they may deem it advisable or necessary to cut and remove in order to open up, construct and maintain such roads and remove said timber above conveyed; and the said parties of the second part shall not in any manner be held liable to account to the party of the first part for any wastage on the said leased premises, or diminuation in value thereof
98 resulting from the cutting of the said trees hereinabove conveyed, and the removal thereof, the cutting down and removal of such smaller growth on said lands as they may deem it advisable or necessary to cut down and remove, or the opening up, constructing and maintaining such roads as the parties of the second part may deem it necessary or requisite to open up, construct and maintain for the convenient removal of the said trees above conveyed.

And the said party of the first part covenants to and with the said parties of the second part, that they have a good right to make the lease and conveyance above set forth; that the property herein leased and conveyed is free from incumbrance, and that they will warrant and defend the title of the parties of the second part thereto against the lawful claims of all persons whomsoever.

In testimony whereof we have hereunto set our hands and seals on this the 27th day of March, 1903.

[Seal] JOHN PATE.
[Seal] SALLIE PATE.

Signed and sealed and delivered in the presence of
NIM McGUIRE.

State of Florida.
County of Walton.

Before the subscriber, personally came John Pate, Sallie Pate, to me well known to be the individuals described in and who executed the above and foregoing instrument, and acknowledged to me, that they executed the same for the uses and purposes therein set forth. And the said Sallie Pate, wife of the said John Pate, upon a private examination by me had separate and apart from her said husband, acknowledged and declared to me that she executed the same freely and voluntarily and without compulsion, constraint, apprehension or fear of or from her said husband.

In witness whereof, I have hereunto set my hand and affixed my official seal, on this the June 15 day, of 1903.

[L.S.] J. W. WARD.

I herey certify that the foregoing is a true and correct copy of the original as filed for record, this the 19th day of June, A. D. 1903.

JAMES A. McLEAN,
Clerk, Circuit (Court.)
By JULIA McKINNON,
D. C.

99 State of Florida,
Walton County.

I, James A. McLean, Clerk of the Circuit Court, in and for said county and state, do hereby certify that the above and foregoing is a true and correct copy of lease as appears of record in my office, in Book 14, at page 459.

In testimony whereof, I have hereunto set my hand and seal official, this the 12th day of April, A. D. 1906.

[Seal] JAMES A. McLEAN,
Clerk, Circuit Court.

Indorsed: Copy of Lease. Court. County, State of Florida. John Pate to J. J. McCaskill & Co. Dated June 15, A. D. 1903. Filed at 9 o'clock A. M., Apr. 14, 1906. F. W. Marsh, Master. (11)

100 WARRANTY DEED

State of Florida,
Walton County.

Know all men by these presents, That we, J. W. Campbell and Flora E. Campbell, husband and wife, of Walton County, Florida, for and in consideration of three hundred and fifty ($350.00), the receipt whereof is hereby acknowledged, do bargain, sell, convey and grant unto J. J. McCaskill, of Walton County, Florida, his heirs, executors, administrators and assigns forever, the following described property, to-wit: The east half of the southeast quarter of Section Twenty-four (24), Township Two (2), north of Range Eighteen (18), west; containing eighty (80) acres, more or less and situate, lying and being in the County of Walton, State of Florida.

. . ..
.. ..
.. ..
.. ..
.. . .
.....

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, free from all exemptions and right of homestead. And we covenant that we are well seized of said property, and have a good right to convey the same; that it is free of encumbrance, and that we & our heirs, executors and administrators, the said grantee, his heirs, executors, administrators and assigns, in the quiet and peaceful possession and enjoyment thereof, against all persons lawfully claiming the same, shall and will forever warrant and defend.

In witness whereof, we have hereunto set our hands and seals, this 19th day of August, A. D. 1903.

[L.S.] J. W. CAMPBELL.
[L.S.] FLORA E. CAMPBELL.
[Seal] .....
[Seal] .....

Signed, sealed and delivered in presence of
MARY G. CAMPBELL.
S. K. GILLIS.

State of Florida,
Walton County.

Before the subscriber, personally appeared J. W. Campbell

and Flora E. Campbell, known to me to be the individuals described, and acknowledged that they executed the foregoing instrument for the uses and purposes therein set forth. And the said Flora E. Campbell, wife of the said J. W. Campbell, on a private examination by me, held separate and apart from her husband, acknowledged and declared that she executed the same freely and voluntarily, and without fear, apprehension compulsion or constraint of or from her husband, and for the purpose of renouncing, relinquishing and conveying all her right of whatsoever kind in and to the said property.

Given under my hand and official seal, this 19th day of August, A. D. 1903.

S. K. GILLIS,
Notary Public,
In & for the State of Florida, at Large.
My Certificate Expires Apr. 6th, 1904.

I hereby certify that the above is a true and correct copy of the original as filed for record, this 7th day of September, 1903.

JAMES A. McLEAN,
Clerk, Circuit Court.

State of Florida,
Walton County.

I, James A. McLean, Clerk of the Circuit Court, in and for the said county and state, do hereby certify that the above and foregoing is a true and correct copy of deed as appears of record in my office in Deed Record No. 15, at page 430, together with the clerk's certificate of record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this the 13th day of April, A. D. 1906.

JAMES A. McLEAN,
Clerk, Circuit Court.

Indorsed: Copy of deed. Court. County, State of Florida. J. W. Campbell to J. J. McCaskill. Dated Aug. 19, A. D. 1903. Filed at 9 o'clock A. M., Apr. 14, 1906. F. W. Marsh, Master. (12)

101 WARRANTY DEED.

State of Florida,
Walton County.

Know all men by these presents, That we, Z. W. Nelson and Alice Nelson, his wife, for and in consideration of seventy-five ($75.00) dollars, the receipt whereof is hereby acknowledged, do bargain, sell, convey and grant unto J. J. McCaskill & Co., of Freeport, Fla., their heirs executors, administrators and assigns forever, the following described property, to-wit: The SW 1/4 of Sec. 30, T. 1, S. S. R. 18, W.; containing one hundred and sixty acres, same being and lying in Walton County, State of Florida.

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. . . . . .
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. . . . . .

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, free from all exemptions and right of homestead. And we covenant that we are well seized of said property, and have a good right to convey the same; that it is free of encumbrance, and that our heirs, executors and administrators, the said grantor their heirs, executors, administrators and assigns, in the quiet and peaceful possession and enjoyment thereof, against all persons lawfully claiming the same, shall and will forever warrant and defend.

In witness whereof, we have hereunto set our hands and seals, this 9th day of May, A. D. 1903.

his
[L.S.] Z. W. X NELSON.
mark
[L.S.] ALEY NELSON.
[Seal] . . . . . .
[Seal] . . . . . .

Signed, sealed and delivered in presence of
J. MARION CLUTTER.
J. M. JOYCE.
Witness to Aley Nelson
Signature.
NIM McGUIRE.
PORTER WHALEY.

State of Florida,
Walton County.

Before the subscriber, personally appeared Z. W. Nelson, and Allie Nelson, known to me to be the individuals described, and acknowledged that they executed the foregoing instrument for the uses and purposes therein set forth. And the said Allie Nelson, wife of the said Z. W. Nelson, on a private examination by me, held separate and apart from her husband, acknowledged and declared that she executed the same freely and voluntarily, and without fear, apprehension, compulsion or constraint of or from her husband, and for the purposes of renouncing, relinquishing and conveying all her right of whatsoever kind in and to the said property.

Given under my hand and official seal, this 16th day of May, A. D. 1903.

[L.S.] NIMROD McGUIRE,
Notary Public.

I hereby certify that the above is a true and correct copy of the original as filed for record, this 18th day of May, A. D. 1903.

JAMES A. McLEAN,
Clerk, Circuit Court.
By JULIE McKINNON,
Deputy Clerk.

State of Florida,
Walton County.

I, James A. McLean, Clerk of the Circuit Court, in and for said county and state, do hereby certify that the above and foregoing is a true and correct copy of deed as appears of record in my office in Deed Record No. 15, at page 382, together with the clerk's certificate of record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this the 13th day of April, A. D. 1906.

[Seal] JAMES A. McLEAN,
Clerk, Circuit Court.

Indorsed: Copy of deed. Z. W. Nelson to J. J. McCaskill & Co. Dated May 9, 1903. Filed at 9 o'clock A. M., Apr. 14, 1906. F. W. Marsh, Master. (13)

[Indorsed:] State of Florida. .....County.
To..... Warranty Deed. Received this .....
day of ....., A. D. 190...., at .....
o'clock ..... M., and recorded in Volume .....,
page ....., and record verified, this .....

day of .....190.... .....
Clerk, Circuit Court. Fee, $.....

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102 And afterwards, to-wit, upon the 6th day of June, A. D. 1906, came the attorney for the United States, to-wit, the Honorable William B. Sheppard, and filed in the office of the clerk of said Court, an Amendment to the Bill of Complaint, of the United States of America, previously filed, which amendment is in the words and figures following, to-wit:

In the Circuit Court of the United States, Northern District of Florida.

Comes now, William B. Sheppard, United States Attorney, pursuant to leave heretofore granted, and amends the bill of complaint in the above entitled cause by inserting in the charging part of said bill in 6th paragraph after the words "Wm. Josiah Ward to," the following: "J. J. McCaskill & Co.," a firm or co-partnership composed of J. J. McCaskill and Robert E. L. McCaskill, then engaged in the manufacture of lumber at Freeport within the said northern district of Florida; and to substitute for the word defendant in the said paragraph, the name of J. J. McCaskill & Co., and by adding in the said paragraph the following: "That the said J. J. McCaskill and Robert E. L. McCaskill afterwards incorporated there said lumber business under the laws of Florida, by the corporate name of the J. J. McCaskill Company, with the said J. J. McCaskill, as president and the said Robert E. L. McCaskill, as secretary, owning a large majority of the stock of said corporation, with the entire management and control of the business and affairs of said corporation. That the said J. J. McCaskill Company, defendant took over from the said J. J. McCaskill or J. J. McCaskill & Co., the said homestead entry of the said William Josiah Ward, with full knowledge of its president and secretary of the negotiations between the said J. J. McCaskill & Company, and the said entryman, by Warren Ward, the agent of the said J. J. McCaskill & Co., and with all the knowledge and notice of the said McCaskill & Co., of the fraud and duplicity practiced by the William Josiah Ward in obtaining the said patent from the United States. So that said allegation may comport with the testimony in said cause.

WM. B. SHEPPARD,
United States Attorney.

Indorsed: The United States, vs. The J. J. McCaskill Co.

Amendment to the Bill. Filed at 9 o'clock A. M., June 6, 1906. F. W. Marsh, Clerk.

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103 And afterwards, to-wit, upon the same day, to-wit, the 6th day of June, A. D. 1906, came the defendant, by its attorneys, Messrs. Maxwell & Reeves, and filed in the office of the clerk of said Court, an amendment to the answer of the said defendant, which answer is in the words and figures following, to-wit.

In the United States Circuit Court, Northern District of Florida.

United States of America,
vs. In Chancery.
The J. J. McCaskill Company.

Now comes the defendant by leave of the Court, and amends the fourth paragraph of its answer herein filed to read as follows:

To the sixth paragraph and the amendment of said bill the respondent says that it is true that after the said William Josiah Ward had obtained from the United States a patent to the land in the said bill of complaint described on the 3rd day of June, 1903, that he on the .... day of September, 1903, sold and conveyed the said property to one, J. J. McCaskill, for the sum of $425.00, which consideration was paid by the said McCaskill, to the said Ward for said premises, and that thereafter the said McCaskill, for a valuable consideration sold and conveyed the said property to this respondent; that the said purchase of said property from the said Ward by the said McCaskill was made in good faith, for a valuable consideration, and without any knowledge or notice of any kind whatsoever upon the part of the said McCaskill of any irregularity of fraudulent conduct on the part of the said Ward in entering or commuting the said land in the land office of the United States, if such irregularity or fraud there was, and that he was a bona fide purchaser of the said premises for value, and without notice. That this defendant purchased the said premises from the said J. J. McCaskill, for a valuable consideration and without any knowledge or notice of any irregularity, or fraudulent conduct on the part of the said Ward, in the en-

tering or commuting of the said lands, if such irregularity or fraud there was; and that it is a bona fide purchaser of the said premises for value and without notice.

MAXWELL & REEVES,
Sols. for Dft.

104 (Indorsed:) U. S. vs. J. J. McCaskill Co. Amendment to Answer. Maxwell & Reeves, Law Office. Pensacola, Fla. Filed at 9 o'clock A. M. Jun. 6, 1906. F. W. Marsh, Clerk.

And afterwards, to-wit: upon the same day, to-wit: the 6th day of June, A. D. 1906, the Judge of said Court made and caused to be entered of record the Final Decree, which decree was filed in the office of the clerk of said Court, and entered upon the minutes of said Court, and is in the words and figures following, to-wit:

United States Circuit Court in and for the Northern District of Florida, Western Division.

The United States of America
vs.
The J. J. McCaskill Company, a corporation under the laws of Florida, Defendants.

This cause coming on to be heard and was argued by counsel for the United States and for the defendant respectively, and thereupon, upon consideration thereof, it is ordered, adjudged and decreed by the Court that each and all of the objections of the defendant to the evidence of the complainant, and the motion of defendant that it be stricken, are overruled and denied, and the patent from the United States to William Josiah Ward issued by the Department of the Interior and dated the 3rd day of June, 1903, and numbered 180.26, embracing the following described lands, to-wit: the North half of the Northeast quarter (N. 1/2 of N. E. 1/4), Southwest quarter of the Northeast quarter (S. W. 1/4 of N. E. 1/4) and the Southeast quarter of the Northwest quarter (S. E. 1/4 of N. W. 1/4) of Section eight (8) in Township one (1) North of Range Seventeen (17) West containing one hundred and sixty (160) acres of land, situated lying and being in the County of Walton and State of Florida and designated in said

patent as the homestead entry of said William Josiah Ward, be and the same is hereby declared null and void and no effect as a conveyance of the described land, and it appearing that said patent is in the possession of the defendant as a
105 muniment of title it is further ordered and decreed that the same be surrendered and delivered up for cancellation and produced to the clerk of this Court to be inscribed by him "null and void" by virtue of this decree.

It is further ordered, adjudged and decreed that the deed from said William Josiah Ward to J. J. McCaskill and Company dated the 4th day of Sept., 1903, purporting to convey the same land described in said patent and being one of the mesne conveyances to the defendant company be and the same is hereby vacated, set aside and declared to be null and void as a conveyance of said land and the same is ordered to be likewise inscribed and that the record thereof in the records of deeds of Walton County, Florida, be inscribed on the margin to that effect, and that the original thereof be surrendered and delivered up to the clerk of this Court to be cancelled and avoided.

It is further ordered, adjudged and decreed that the deed from the said J. J. McCaskill and Company to the said J. J. McCaskill Company, corporation, dated the ..... day of ....., 190.., purporting to be a conveyance of said land embraced in said patent, be and the same is hereby vacated, annulled and set aside and declared to be void as a conveyance of said land to defendant and that the same be inscribed by the clerk as void and of no effect and that the record thereof be inscribed with notice of this decree and that defendant, the J. J. McCaskill Company, be and it is hereby enjoined forever from setting up or claiming title to the said land by reason of the said patent or any of the mesne conveyances from said Ward to the said defendant.

Ordered and adjudged and decreed this 6 day of June, A. D. 1906.

CHAS. SWAYNE,
Judge.

(Indorsed:) United States Circuit Court, Northern District of Florida. The United States vs. The J. J. McCaskill Co., a corporation. Final Decree. Filed at 9 o'clock A. M. Jun. 6, 1906. F. W. Marsh, Clerk.

106 And afterwards, to-wit: on the 15th day of June, A. D. 1906, came the attorney for the United States, and filed in the office of the Clerk of said Court a petition to open decree, which petition is in the words and figures following, to-wit:

United States Circuit Court, Northern District of Florida.

The United States of America
vs.
The J. J. McCaskill Company, a Corporation.

The petition of the United States, complainant in the above entitled cause respectfully shows unto the Court, that a final decree for the United States was entered in due course in said cause during the March adjourned term on the 6th day of June, A. D. 1906, decreeing that the prayer of the complainant's bill be granted and that the patent granted to one, William Josiah Ward, therein described be vacated and set aside, and that the mesne conveyances of the land described in said patent from said William Josiah Ward to the defendant, the J. J. McCaskill Company, each and every one be declared null and void as conveyances of the said land and that the defendant be enjoined from claiming or selling [setting] up title thereto by reason of said conveyances, but by oversight no decree for costs was made in favor of the United States. That the complainant incurred great costs in maintaining its said suit and is entitled to be reimbursed therefor.

Your petitioner therefore prays that said decree may be corrected so as to include an order that the clerk of said Court tax against the defendant J. J. McCaskill Company, the reasonable costs of the United States in its behalf expended in and about said suit, and that said decree stand corrected.

WM. B. SHEPPARD,
United States Attorney.

Upon reading and considering the foregoing petition, and it appearing that the final decree in said cause omitted any order for costs, it is ordered, adjudged and decreed,
107 that the clerk of said Court tax the reasonable costs of complainant against the defendant in the said suit and that said decree be amended to that extent.

Done and ordered this .... day of ....., A. D. 1906.

.....,
Judge.

(Indorsed:) The United States vs. The J. J. McCaskill Co.

Petition to Open Decree. Filed Jun. 15, 1906. F. W. Marsh, Clerk.

And afterwards, to-wit: upon the 20th day of November, A. D. 1906, the Judge of said Court made and caused to be entered of record an order permitting the entry of an appeal, which order, together with the petition in regard to the said entry, is in the words and figures following, to-wit:

In the United States Circuit Court, Fifth Judicial Circuit, Northern District of Florida, at Pensacola.

The J. J. McCaskill Company, a corporation, Appellant,
vs.
The United States, Appellee.

The above named J. J. McCaskill Company conceiving itself aggrieved by the decree entered on June 6th, A. D. 1906, in the above entitled proceeding, granting relief in the bill of complaint prayed, doth hereby appeal from said decree to the Circuit Court of Appeals of the United States for the Fifth Judicial Circuit to be held at New Orleans, and it prays that its appear-[ance] may be allowed and that a transcript of record and proceeding, and papers upon which the said decree was made duly authenticated may be sent to the said Circuit Court of Appeals.

MAXWELL & REEVES,
Sols. for The J. J. McCaskill Co.

It is ordered that the said appeal be allowed as prayed for, this 20th day of November, A. D. 1906.

CHAS. SWAYNE,
Judge.

108 (Indorsed:) J. J. McCaskill Company, Appellant, vs. United States, Appellee. Entry of Appeal. Maxwell & Reeves, Law Offices, Pensacola, Fla. Filed Nov. 20, 1906. F. W. Marsh, Clerk.

And afterwards, to-wit: on the 20th day of November, A. D. 1906, was filed with the clerk of said Court an Assignment of Errors, which assignment is in the words and figures following, to-wit:

In the United States Circuit Court Fifth Judicial Circuit, Northern District of Florida.

The J. J. McCaskill Company, a corporation, Appellant,
vs.
United States, Appellee.

Now comes the J. J. McCaskill Company, appellant herein and assigns as error the following:

1. The ruling of the Court in permitting the witness, Antoine Paul to testify as to the statement made to him by William Josiah Ward.

2. The ruling of the Court in refusing to strike the testimony of Antoine Paul as to statements made to him by William Josiah Ward.

3. The ruling of the Court in admitting in evidence the written statement of William Josiah Ward to Antoine Paul.

4. The ruling of the Court in permitting the witness J. J. McCaskill to testify that he had bought other homestead claims in Section Eight.

5. The ruling of the Court in permitting the witness Henry S. Chubb to testify as to the Cora Miller patent.

6. The ruling of the Court in permitting the witness Chubb to testify as to the George W. Miller patent.

7. The ruling of the Court in permitting the witness Henry S. Chubb to testify as to the Lewis J. Ward patent.

8. The ruling of the Court in admitting in evidence the letter marked Exhibit "A."

109 9. The ruling of the Court in admitting in evidence the letter marked Exhibit "B."

10. The ruling of the Court in admitting in evidence the letter marked Chubb Exhibit "C."

11. The ruling of the Court in permitting the witness Chubb to testify as to the William J. Ward patent.

12. The ruling of the Court in permitting the witness Chubb to testify as to the Jesse Josiah Ward patent.

13. The ruling of the Court in permitting the witness Chubb to testify as to the Tilly Andress patent.

14. The ruling of the Court in admitting in evidence the letter marked Chubb Exhibit "D."

15. The ruling of the Court in permitting the witness Chubb to testify as to the Henry Boone patent.

16. The ruling of the Court in admitting in evidence the letter marked Exhibit "E."

17. The ruling of the Court in admitting in evidence the letter marked Chubb Exhibit "F."

18. The ruling of the Court in admitting in evidence the letter marked Chubb Exhibit "G."

19. The ruling of the Court in decreeing that the patent from the United States to William Josiah Ward, dated June 3rd, A. D. 1903, was null and void.

20. The ruling of the Court in decreeing that the patent from the United States to William Josiah Ward was as to this defendant null and void.

21. The ruling of the Court in decreeing that the deed from William Josiah Ward to J. J. McCaskill & Company, dated the 4th day of September, A. D. 1903, was null and void.

22. The ruling of the Court in decreeing that the deed from J. J. McCaskill & Company to the J. J. McCaskill Company was null and void.

23. The ruling of the Court in rendering the decree of June 6th, A. D. 1906.

E. C. MAXWELL,
L. J. REEVES,
MAXWELL & REVES,
Attorneys for Appellant.

(Indorsed:) The J. J. McCaskill Co., Appellant, vs. United

States, Appellee. Assignment of Errors. Filed Nov. 20, 1906. F. W. Marsh, Clerk. Maxwell & Reeves, Law Offices, Pensacola, Florida.

United States of America,

To the United States of America:

You are hereby cited and admonished to be and appear at a term of the Circuit Court of Appeals of the United States for the Fifth Judicial Circuit, to be holden at New Orleans, in the State of Louisiana, thirty days after the date hereof, pursuant to an appeal filed in the clerk's office of the Circuit Court of the United States for the Northern District of Florida, wherein The J. J. McCaskill Company, a corporation, is appellant, and the United States is appellee, to show cause, if any there be, why the decree in said appeal mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 20th day of November, A. D. 1906.

CHAS. SWAYNE.
Judge.

[Seal]

Executed the within citation at Pensacola, Fla., Nov. 20, 1906, upon W. B. Sheppard, U. S. District Attorney for the Northern Dist of Fla., by handing to and leaving a true and correct copy with him personally.

T. F. McGOWN,
U. S. Marshal.

By H. WOLF,
Ch. O. Deputy.

The foregoing has the following indorsements, to-wit: Civ. 538. J. J. McCaskill Co. vs. The United States. Citation.

[CLERK'S CERTIFICATE.]

United States of America,
Northern District of Florida.

I, F. W. Marsh, Clerk of the Circuit Court of the United States in and for the Northern District of Florida, and the Fifth Judicial Circuit, do hereby certify that in pursuance of the foregoing appeal, and in compliance with the attached citation and the provisions of law applicable thereto, the foregoing pages, numbered from one to one hundred and ten, both inclusive, constitute a true and complete transcript of the record and proceedings in the said Circuit Court of the United States for the Northern District of Florida, in the cause of The United States vs. The J. J. McCaskill Company, as the same remains of record in said Court.

In testimony whereof, I have hereunto set my hand and caused the seal of said Court to be hereunto affixed at the City of Pensacola in said district this 3rd day of December, A. D. 1906.

F. W. MARSH
Clerk.

[Seal]

And thereafter on December 8th and 10th, 1906, respectively, there was filed in said cause in said Circuit Court of Appeals the copy of the appeal bond and the stipulation of the parties, appearing on pages 1, 2 and 3 hereof.

And thereafter the following proceedings were had in said cause in said Circuit Court of Appeals, viz:

ARGUMENT AND SUBMISSION.

J. J. McCaskill Company
vs. No. 1624.
The United States.

On this day this cause was regularly called, and after argument by E. C. Maxwell, Esq., for appellant, and W. W. Howe, Esq., for appellee, was submitted to the Court.
Feb. 18, 1907.

And thereafter on March 5th, 1907, an opinion of said Circuit Court of Appeals was filed in said cause in words and figures following, to-wit:

OPINION.

Filed March 5, 1907.

CHARLES H. LEDNUM,
Clerk U. S. Circuit Court of Appeals.

United States Circuit Court of Appeals, Fifth Circuit.

The J. J. McCaskill Company
vs. No. 1624.
The United States.

Appeal from the Circuit Court of the United States, Northern District of Florida.

Before PARDEE, McCORMICK and SHELBY, Circuit Judges.

By the COURT:
In the opinion of a majority, no one of the errors assigned or otherwise apparent upon the record is well taken, and the

evidence properly admitted on the hearing is sufficient to support the decree appealed from.

The decree of the Circuit Court is therefore affirmed.

And on March 5th, 1907, in the record of the proceedings of the said Circuit Court of Appeals as a decree in said cause in the words and figures following, to-wit:

FINAL DECREE.

The J. J. McCaskill Company
vs. No. 1624.
The United States.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Northern District of Florida.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed.

March 5, 1907.

And thereafter on February 17th, 1908, a petition for appeal was filed in said cause in said Circuit Court of Appeals in words and figures following, to-wit:

PETITION FOR APPEAL.

In the United States Circuit Court of Appeals, Fifth Judicial Circuit.

The J. J. McCaskill Company, Appellant,
vs.
The United States of America, Appellee.

To the Judges of the Above Named Court:

The J. J. McCaskill Company, the above named appellant, conceiving itself aggrieved by the judgment of affirmance entered in this Court in the above styled cause, affirming the final decree of the Circuit Court of the United States of the

Fifth Circuit, in the suit of The United States of America against The J. J. McCaskill Company, a corporation, which judgment of affirmance was entered on the 5th day of March, A. D. 1907, hereby appeals from said final decree of affirmance and prays that his its appeal to the Supreme Court of the United States may be allowed, and that a transcript of the record and proceedings and papers upon which said final decree, order and judgment of affirmance was made, duly authenticated, may be sent to the said Supreme Court of the United States.

And now at the time of filing this petition for appeal, the said The J. J. McCaskill Company, a corporation, appellant, files its assignment of errors setting up separately and particularly, each error asserted and intended to be urged in the said Supreme Court of the United States of America.

And your petitioner will ever pray.

THE J. J. McCASKILL COMPANY,
A Corporation, organized under the laws of the State of Florida, Appellee.
By E. C. MAXWELL,
L. J. REEVES,
WM. W. FLOURNOY,
Solicitors for Appellant.

The foregoing petition for appeal is hereby granted this the 17 day February, A. D. 1908.

DON A. PARDEE,
Circuit Judge.

The foregoing has the following indorsements, to-wit: No. 1624. The J. J. McCaskill Company vs. The United States of America. Petition for Appeal. U. S. Circuit Court of Appeals. Filed Feb. 17, 1908. Charles H. Lednum, Clerk.

And thereafter on February 17th, 1908, an assignment of errors was filed in said cause in said Circuit Court of Appeals in words and figures following, towit:

ASSIGNMENT OF ERRORS.

In the United States Circuit Court of Appeals, Fifth Judicial Circuit.

The J. J. McCaskill Company, Appellant,
vs.
The United States of America, Appellee.

Now comes The J. J. McCaskill Company, appellant herein and assigns as error the following:

1. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in permitting the witness, Antoine Paul, to testify as to the statement made to him by William Josiah Ward.

2. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in refusing to strike the testimony of Antoine Paul as to statements made to him by William Josiah Ward.

3. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in admitting in evidence the written statement of William Josiah Ward to Antoine Paul.

4. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in permitting the witness J. J. McCaskill to testify that he had bought other homestead claims in Section Eight.

5. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in permiting the witness Henry S. Chubb to testify as to the Cora Miller patent.

6. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in permitting the witness Chubb to testify as to the George W. Miller patent.

7. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in permitting the witness Henry S. Chubb to testify as to the Lewis J. Ward patent.

8. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in admitting in evidence the letter marked Exhibit "A."

9. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in admitting in evidence the letter marked Exhibit "B."

10. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in admitting in evidence the letter marked Chubb Exhibit "C."

11. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in permitting the witness Chubb to testify as to the William J. Ward patent.

12. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in permiting the witness Chubb to testify as to the Jessie Josiah Ward patent.

13. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in permitting the witness Chubb to testify as to the Tilly Andress patent.

14. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in admitting in evidence the letter marked Exhibit "D."

15. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in permitting the witness Chubb to testify as to the Henry Boone patent.

16. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in admitting in evidence the letter marked Exhibit "E."

17. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in admitting in evidence the letter marked Chubb Exhibit "F."

18. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in admitting in evidence the letter marked Chubb Exhibit "G."

19. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in decreeing that the patent from the United States to William Josiah Ward, dated June 3rd, A. D. 1903, was null and void.

20. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in decreeing that the patent from the United States to William Josiah Ward was as to this defendant null and void.

21. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in decreeing that the deed from William Josiah Ward to J. J. McCaskill & Company, dated the 4th day of September, A. D. 1903, was null and void.

22. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in decreeing that the deed from J. J. McCaskill & Company to the J. J. McCaskill Company was null and void.

23. The decree of affirmance of the Circuit Court of Appeals is erroneous in that it affirms the ruling of the Circuit Court in rendering the decree of June 6th, A. D. 1906.

E. C. MAXWELL &
L. J. REEVES,
WM. W. FLOURNOY,
Solicitors for Appellant.

The foregoing has the following indorsements, to-wit: No. 1624. The J. J. McCaskill Company vs. The United States of America. Assignment of Errors. U. S. Circuit Court of Appeals. Filed Feb. 17th, 1908. Charles H. Lednum, Clerk.

And thereafter on February 17th, 1908, a bond on appeal was filed in said cause in said Circuit Court of Appeals in words and figures following, to-wit:

BOND ON APPEAL.

In the United States Circuit Court of Appeals, Fifth Judicial Circuit.

Know all men by these presents that we, The J. J. McCaskill Co., a corporation, as principal, and C. D. Monroe and David Evans as sureties, are held and firmly bound unto The United States of America in the full and just sum of two hundred and fifty dollars ($250.00) to be paid to the said United States of America or its asigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally firmly by these presents.

Signed and sealed this the 14th day of Febry., A. D. 1908.

The condition of the above and foregoing obligation is such that whereas, in a certain cause lately pending in the Circuit Court of the United States for the Fifth Judicial Circuit, at Pensacola, Florida, wherein the United States of America was complainant, and the said The J. J. McCaskill Company, a corporation, was respondent, a decree in equity was entered canceling a certain patent issued by the United States of America, to one William Josiah Ward and canceling certain conveyances from and through the said Ward to the said The J. J. McCaskill Company from which decree the said The J. J. McCaskill Company appealed to the Circuit Court of Appeals of the United States for the Fifth Judicial Circuit, in which said Court the said decree of cancellation was affirmed, and whereas, the said The J. J. McCaskill Company has entered its appeal from the said decree of affirmance to the Supreme Court of the United States of America; now if the said The J. J. McCaskill Company shall prosecute its appeal to effect, and shall answer all damages and costs to the United States of America if it fails to make its said appeal and plea good, then the foregoing obligation shall be void, otherwise shall remain in full force and virtue.

THE J. J. McCASKILL COMPANY.
By J. J. McCASKILL,
President.

C. D. MONROE,
DAVID EVANS.

Bond accepted.
February 17th, 1908.

DON A. PARDEE,
Circuit Judge.

State of Florida,
County of Walton.

Before the subscriber personally came C. D. Monroe and David Evans, who being by me first duly sworn on oath, each for himself, that he executed the foregoing obligation and each affiant on oath says that he is worth the amount of the penalty of the said bond in visible property in the State of Florida, over and above all liabilites and exemptions.

C. D. MONROE,
DAVID EVANS.

Sworn to and subscribed before me this the 14th day of Febry., A. D. 1908.

WM. M. WILSON,
Notary Public.

[Seal]
My commisison expires 8/10/08.

The foregoing has the following indorsements, to-wit: No. 1624. The J. J. McCaskill Company vs. The United States of America. Bond. U. S. Circuit Court of Appeals. Filed Feb. 17, 1908. Charles H. Lednum, Clerk.

And thereafter on February 17, 1908, there was filed five affidavits in said cause in said Circuit Court of Appeals in words and figures following, to-wit:

AFFIDAVITS.

In the United States Circuit Court of Appeals, Fifth Judicial Circuit.

The J. J. McCaskill Company, a Corporation, Appellant,
vs.
The United States of America, Appellee.

State of Florida,
Escambia County.

Before the subscriber personally came R. J. Pate, who being by me first duly sworn upon oath says, that he is acquainted with the lands and the value thereof involved in the above entitled cause, to-wit:

The North 1/2 of Northeast 1/4, the Southwest 1/4 of the Northeast 1/4, and the Southeast 1/4 of the Northwest 1/4

of Section 8 in Township 1 North, Range 17 West, in Walton County, Florida.

The affiant on oath further says from his knowledge of the said lands, and their value, and of the value of lands similar thereto, that the said lands are worth more than one thousand ($1,000) dollars.

R. J. PATE.

Sworn to and subscribed before me this the 14th day of February, A. D. 1908.

W. A. HOLOWAY,
[Seal] Notary Public.

My commission expires Dec. 17th, 1910.

The foregoing has the following indorsements, to-wit: No. 1624. The J. J. McCaskill Company, Appellant, vs. The United States of America, Appellee. Affidavit. U. S. Circuit Court of Appeals. Filed Feb. 17, 1908. Charles H. Lednum, Clerk.

In the United States Circuit Court of Appeals, Fifth Judicial Circuit.

The J. J. McCaskill Company, a Corporation, Appellant,
vs.
The United States of America, Appellee.

State of Florida,
Escambia County.

Before the subscriber personally came J. D. Sawyer, who being by me first duly sworn upon oath says, that he is acquainted with the lands and the value thereof involved in the above entitled cause, to-wit:

The North 1/2 of Northeast 1/4, the Southwest 1/4 of the Northeast 1/4, and the Southeast 1/4 of the Northwest 1/4 of Section 8 in Township 1 North, Range 17 West, in Walton County, Florida.

The affiant on oath further says from his knowledge of the said lands, and their value, and of the value of lands similar thereto, that the said lands are worth more than one thousand ($1,000) dollars.

J. D. SAWYER.

Sworn to and subscribed before me this the 14th day of February, A. D. 1908.

W. A. HOLOWAY,
[Seal] Notary Public.
My commission expires Dec. 17th, 1910.

The foregoing has the following indorsements, to-wit: No. 1624. The J. J. McCaskill Company, Appellant, vs. The United States of America, Appellee. Affidavit. U. S. Circuit Court of Appeals. Filed Feb. 17, 1908. Charles H. Lednum, Clerk.

In the United States Circuit Court of Appeals, Fifth Judicial Circuit.

The J. J. McCaskill Company, a Corporation, Appellant,
vs.
The United States of America, Appellee.

State of Florida,
Escambia County.

Before the subscriber personally came J. F. Whiddon, who being by me first duly sworn upon oath says, that he is acquainted with the lands and the value thereof involved in the above entitled cause, to-wit:

The North 1/2 of Northeast 1/4, the Southwest 1/4 of the Northeast 1/4, and the Southeast 1/4 of the Northwest 1/4 of Section 8 in Township 1 North, Range 17 West, in Walton County, Florida.

The affiant on oath further says from his knowledge of the said lands, and their value, and of the value of lands similar thereto, that the said lands are worth more than one thousand ($1,000) dollars.

J. F. WHIDDON.

Sworn to and subscribed before me this the 14th day of February, A. D. 1908.

W. A. HOLOWAY,
Notary Public.
My commission expires Dec. 17th, 1910.

The foregoing has the following indorsements, to-wit: No. 1624. The J. J. McCaskill Company, Appellant, vs. The United States of America, Appellee. Affidavit. U. S. Circuit Court of Appeals. Filed Feb. 17, 1908. Charles H. Lednum, Clerk.

In the United States Circuit Court of Appeals, Fifth Judicial Circuit.

The J. J. McCaskill Company, a Corporation, Appellant,
vs.
The United States of America, Appellee.

State of Florida,
Escambia County.

Before the subscriber personally came C. E. Hewett, who being by me first duly sworn upon oath says, that he is acquainted with the lands and the value thereof involved in the above entitled cause, to-wit:

The North 1/2 of Northeast 1/4, the Southwest 1/4 of the Northeast 1/4, and the Southeast 1/4 of the Northwest 1/4 of Section 8 in Township 1 North, Range 17 West, in Walton County, Florida.

The affiant on oath further says from his knowledge of the said lands, and their value, and of the value of lands similar thereto, that the said lands are worth more than one thousand ($1,000) dollars.

C. E. HEWETT.

Sworn to and subscribed before me this the 14th day of February, A. D. 1908.

W. A. HOLOWAY,
Notary Public.

My commission expires Dec. 17th, 1910.

The foregoing has the following indorsements, to-wit: No. 1624. The J. J. McCaskill Company, Appellant, vs. The United States of America, Appellee. Affidavit. U. S. Circuit Court of Appeals. Filed Feb. 17, 1908. Charles H. Lednum, Clerk.

In the United States Circuit Court of Appeals, Fifth Judicial Circuit.

The J. J. McCaskill Company, a Corporation, Appellant,
vs.
The United States of America, Appellee.

State of Florida,
Escambia County.

Before the subscriber personally came W. H. Mayo, who being by me first duly sworn upon oath says, that he is ac-

quainted with the lands and the value thereof involved in the above entitled cause, to-wit:

The North 1/2 of Northeast 1/4, the Southwest 1/4 of the Northeast 1/4, and the Southeast 1/4 of the Northwest 1/4 of Section 8 in Township 1 North, Range 17 West, in Walton County, Florida.

The affiant on oath further says from his knowledge of the said lands, and their value, and of the value of lands similar thereto, that the said lands are worth more than one thousand ($1,000) dollars.

W. H. MAYO.

Sworn to and subscribed before me this the 14th day of February, A. D. 1908.

W. A. HOLOWAY,
Notary Public.

My commission expires Dec. 17th, 1910.

The foregoing has the following indorsements, to-wit: No. 1624. The J. J. McCaskill Company, Appellant, vs. The United States of America, Appellee. Affidavit. U. S. Circuit Court of Appeals. Filed Feb. 17, 1908. Charles H. Lednum, Clerk.

And thereafter on February 20th, 1908, a citation on appeal was filed in said cause in said Circuit Court of Appeals in words and figures following, to-wit:

CITATION ON APPEAL.

UNITED STATES OF AMERICA. SS.

The President of the United States,

To the United States of America and Chas. J. Bonaparte, Attorney General of the United States, and Emmett Wilson, Acting United States Attorney for the Northern District of Florida—Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court to be held at the City of Washington, in the District of Columbia, within thirty days from the date of this writ, pursuant to an order of appeal filed in the clerk's office of the United States Circuit Court of Appeals for the Fifth Circuit, wherein The J. J. McCaskill Company, a corporation, is appellant, and The United States of America is appellee, to show cause, if any there be, why the decree in said order of appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 17th day of Feb., A. D. 1908, and of the Independence of the United States the 132 year.

DON A. PARDEE,
United States Circuit Judge.

I accept service of the foregoing, this February 19th, 1908.

EMMETT WILSON,
U. S. Atty. No. Dist. Fla.

Pensacola.

[Indorsed:] No. 1624. U. S. Circuit Court of Appeals. Filed Feb. 20, 1908. Charles H. Lednum, Clerk.

United States Circuit Court of Appeals, for the Fifth Circuit.

I, Charles H. Lednum, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing pages contain a true copy of the record, assignment of errors, and all proceedings in the case except the affidavits of George W. Miller, T. Y. Watts, Charles Ward and J. N. Blackman, and the fraudulent report of Antoine Paul, which were stricken from the record by stipulation of the parties in the case of The J. J. McCaskill Company, appellant, No. 1624, versus The United States, appellee, as the same remains upon the files and records of said United States Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, at the City of New Orleans, Louisiana, this 27th day of February, A. D. 1908.

[Seal] CHARLES H. LEDNUM,

Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

Office Supreme Court, U. S.
FILED.
JAN 20 1910
JAMES H. McKENNEY,
Clerk.

In The Supreme Court of The United States

THE J. J. McCASKILL COMPANY,
APPELLANT.
vs.
UNITED STATES OF AMERICA,
APPELLEE.

No. 103.

Appeal from the United States Circuit Court of Appeals, Fifth Judicial Circuit, at New Orleans, La.

Brief of W. W. FLOURNOY, Counsel for Appellant:

BRIEF PRINT.

In The Supreme Court of The United States

THE J. J. MCCASKILL COMPANY,
APPELLANT.
vs.
UNITED STATES OF AMERICA
APPELLEE.

NO. 321.

Appeal from the United States Circuit Court of Appeals, Fifth Judicial Circuit, at New Orleans, La

Brief of W. W. FLOURNOY, Counsel for Appellant:

STATEMENT.

In this cause the Appellee filed its Bill of Complaint in the Circuit Court of the United States at Pensacola, Florida, in the Northern District of Florida, to cancel a patent issued by the local United States land office at Gainesville, Florida, to William Josiah Ward, and to cancel the deed by him executed to the grantor of the appellant upon the ground that the final proof made by Ward, upon which the patent was issued was false, fraudulent and untrue and of which fraud the appellant

had knowledge. The Circuit Court at Pensacola, Judge Charles Swayne presiding, held that the Complaint of the Government was well founded and entered final decree, decreeing that the patent be cancelled, that the deed conveying the title to the appellant be brought into court and cancelled and that the record of the same in Walton County Florida be cancelled.

Appellant contends, not only that the averments of the Bill of Complaint and the evidence are insufficient, but also that the appellant is beyond cavil an *innocent purchaser* of the real estate conveyed by Ward to the immediate grantor of the appellant whatever might have been the knowledge, purpose or position of either Ward or appellant's grantor, and that only where the proof is positive and clearly sufficient to charge the appellant with knowledge of the fraud can his position as an innocent purchaser be successfully assailed. Otherwise the elementary principles so necessary for the proper protection of commercial transactions would not be effective and patents and deeds, executed with such caution and solemnity would be of no force.

ARGUMENT.

We will leave the discussion of the assignments of error one to eighteen, both inclusive, relative to the error of the Chancellor in the admission of certain evidence over the objection of the Counsel for appellant to our associate Counsel, Messrs. Maxwell & Reeves, and will limit our attention to assignments of error numbers nineteen to twenty, those relative to the error of the Court in declaring null and void the patent issued by the Government to William Josiah Ward and in decreeing cancellation of the subsequent deeds from him to J. J. McCaskill and from the latter to the appellant and in decreeing the cancellation of the records of such conveyances. And in the determination of these assignments of error and the issues involved therein, we will discuss them in the following divisions; namely:

1. Are the averments of the Bill of Complaint sufficient to give the Court of equity jurisdiction?

2. Do the facts proved by the Government sustain the averment that the final proof of the entryman was false, fraudulent and untrue?

3. Will this Court review decisions by the land office officials upon questions of fact?

4. Does the appellant occupy the position of an innocent purchaser and is the Government precluded because of his rights as such?

We think that the answer to each of the three first questions should be in the negative, whereas that to the fourth should be in the affirmative. If so, then the decision of the Chancellor from which the appeal was taken, in cancelling the patent and the mean conveyances to the appellant is erroneous and should be reversed.

The averments of the Bill of Complaint (R. P. 3, 4, 5 and 6.) are, sections one, two and three thereof, that the land in the controversy for which the patent issued was on the first of January 1903 and prior thereto land of the United States Government subject to homestead entry by its citizens possessing certain requisite qualifications; that William Josiah Ward on the 18th of September, 1900 made application to the Land Office at Gainesville to enter the same as his homestead, entry being numbered 30230; that thereafter the said Ward availed himself of the right to commute said entry by paying the Government price therefor and received cash entry certificate No. 18026 on the 13 of January, 1903 and thereafter received Patent, dated June 3, 1903. Sections four and five are as follows:

> 4. "Your orator shows unto your Honor that the said William Josiah Ward, in the commutation proof taken on the 29th, day of December, 1902, alleged himself and made it appear by the testimony of others, that he had established a residence upon said land on March 10th, 1901, and

that he continuously resided thereon from that date until and up to the date of submission of final proof, except for absences on two or three occasions of not exceeding three months, due to the illness of his wife; that he had improved the tract by erection of a house thereon and by cultivating one-half acre for two seasons, and the whole amount of improvements being alleged to be of the value of forty ($40.00) dollars, and that he had complied with the law entitling him to a patent to said lands."

5. "Your orator further shows unto the Court that the statement of the said Ward and the proof presented by him on the hearing for final proof, was false, fraudulent and untrue; that he did not have the improvements that he alleged that he had on said premises, and had not cultivated the said land; that the improvements accomplished on said entry consisted of nothing more than a pine pole cabin, never completed, without floor, door or chimney; that there was absolutely no means of entrance or exit thereto or therefrom unless through the unclosed gable ends of said cabin; that the interstices between the poles of said cabin were never closed in any fashion; that the only ground on said entry which have (had) undergone cultivation was a space within (an) enclosure of thirty by thirty-five feet; that the said Ward never resided upon said land, but during the period allowed for residence on the homestead entry, entryman actually resided at his home, where for a long time he had maintained his residence, three and one half miles distance from said entry."

While section six and the amendments aver, in substance, that the Appellant had knowledge of the alleged fraud. It will be observed that the averments as to fraud, fraudulent and untrue actions on the part of the

entryman are those contained in sections four and five and that the averments of notice are in section six and the amendments. The answer of the Appellant (R. P. 7) prays the same advantage as if it had demurred to the Bill of Complaint. And we think that a demurrer thereto should have been sustained, not only because of the averments of *mere legal conclusions* that the action of the entryman was false, fraudulent and untrue, but also because of a failure to aver that the facts, which are stated and which constitute the final proof, were untrue

It is a fundamental rule of pleading, as binding upon Court of Equity as upon Courts of Law, that the facts must be stated and pleaded. The facts upon which fraud is based must be specially pleaded. A mere general averment of fraud can be considered as only the averment of a conclusion and should be adjudged insufficient. Such an averment, without the facts, presents no issue for trial and should fall upon demurrer. And it has been held that it not only should fall upon demurrer, but that it, will not even sustain a decree. And a demurrer admits only facts that are well pleaded. It does not admit the truth of a conclusion in law.

20 CYC. 734.
12 ENC. P. & P. 942.
Maxwell Land grant case 121 U.S. 325;30 L. Ed 949.
Wiseman vs. Eastman 57 Pace. 398
U. S. 15 Trock. Morton 98 U. S. 61;25 L. Ed 93.
U. S. vs. Tichnor 12 Fed. 415.

In the case of United States vs. Maxwell land grant, *supra*, the Court said, "While Courts of Equity have the power to set aside, cancel or correct Patents, or other evidences of title obtained from the United States by fraud, or mistake, and to correct under proper circumstances such mistake, this can *only be done on specific averment* of the mistake, or the fraud, supported by clear and satisfactory proof The general doctrine on

this subject is that, when in a Court of Equity it is proposed to set aside, to annul, or correct a written instrument, for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal and convincing, and it can not be done upon a bare preponderance of evidence which leaves the issue in doubt. Where the purpose is to annul a patent, a grant, or other formal evidence of title from the United States, the respect due to such an instrument, the presumption that all the preceding steps required by law had been observed, the importance and necessity of the stability of titles depend on this official instrument demand that the effort to set aside should be successful only when the *allegations* on which this attempt is made are *clearly stated and fully proved*."

In the case of the United States vs. Tichnor, *supra*, where the averments of the Bill were that the patent was *fraudulently* obtained by means of *false proof*, but omitted to aver in what the fraud consisted and wherein the proof was false, the Court held that such an averment was insufficient as against the demurrer and that the Bill should have averred both the facts constituting the fraud and in what particulars the proof was false. This is the rule laid down also in the case of Story's Equity Pleading, Section 251, and followed in Oakland vs. Carpenter, 21 California, 663 and Semple vs. Hagger, 127, California, 166.

In the case of Wiseman vs Eastman, *supra*, the Court said, "Mere general allegation to fraud and misrepresentation will not suffice." And that, "The extent of the authority of the Courts to review the decision of the Land Department and for what cause patents to land will be set aside by the Courts have frequently been a subject for judicial determination. While it is settled that the power exists, the Courts have always been slow to exercise it. Indeed, our attention has been called to no case where patent has been set

aside where the *charge* was *fraud, imposition, or false testimony* practiced upon the Land Department On the other hand, where the charge was mistake or misconstruction of the law, the Courts have exercised more liberality, though even here it is held the mistake, or misconstruction, must be clearly manifested, and not *founded* upon a *possible finding* of the facts different from that put upon them by the Land Department." And the same rule was laid down in the case of Quinby vs. Conlan, 104 U. S., 420, in which Justice Field said, "It would lead to endless litigation and be fruitful of evil if a supervisory power were vested in the Courts over the action of the officials of the Land Department on mere questions of facts presented for their determination. The same rule was followed, also, in Vance vs Burbank, 101 U. S. 514, in which the Courts said that not only must the fraud be specifically alleged, but also, "It has been settled that the frauds, in respect to which relief will be granted in this class of cases, must be such as has been practiced on the unsuccessful party and prevented him from establishing his case fully to the Department so that it may be properly said there has never been a decision in a real contest about the subject matter of the enquiry. False testimony, or forged documents, even, are not enough, if the disputed matter has actually been presented to, or considered by, the appropriate tribunal." This is supported by U. S. vs. Trockmorton, 98 U. S. 61, and Marquez vs. Frisbie, 101, U. S. 473. And in the case of Wiseman vs. Eastman the allegations were that Eastman secured his patent upon false and untrue affidavits and testimony, yet the Court held, as above, that it was not enough to show that false testimony, or forged documents, had been employed and sustained the lower Court in its judgement upon the testimony dismissed the Bill of Complaint

In the case of Marquez vs. Frisbie, *supra*, Justice Miller said, "It is idle at this day to suppose that the expansive machinery of a Court of Equity is to be put

in operation for the purpose of reviewing and reversing the judgement of the tribunal to whom that question is by law entrusted on such loose, untraversable allegation of fraud in general."

And in the United States vs, Trockmorton, *supra*, the Court held, "The maxim that fraud vitiates every judgment must be taken, like every general maxim, to apply to cases where fraud is admissible but where the same matter has been actually tried, or so in issue, that it might have been tried it is not again admissible

The acts for which a Court of equity will set aside, or annul a judgment, or decree, between the same parties rendered by a Court of competent jurisdiction has relation to fraud, extrinsic, or collateral, to the matter tried by the first Court and not to a fraud in the matter on which the decree was rendered."

And in the case of U. S. vs White, Judge Sawyer, followed in U. S. vs. Trockmorton, *supra*, held the fraud for which the Courts will set aside a patent, granted by the United States in the regular course of proceeding in the Land Office, or fraud extrinsic, or collateral, to the matter tried and determined, upon which the patent issued, and not fraud consisting of perjury in the matter on which the determination was made."

In the light of the above authorities it was essential that the Bill of Complaint should have averred, not only facts from which the Court might judge that fraud existed and was the inducing cause of the issuing of the patent, but also that it was fraud which was not in issue before the Department. In the fourth and fifth paragraph of the Bill of Complaint the averment is that the Patentee made it appear that he had established a residence upon said land and that his final proof was false, fraudulent and untrue. But this is a mere legal conclusion upon which no issue can be made. Besides these averments are followed by statements of fact descriptive of the conduct of the Patentee on his homestead *without any averment that the facts, as stated, were*

untrue. The value and extent of the improvements by the Patentee, whether it was a log cabin worth only $10.00, or a residence of great value, nor is the amount, or extent, of cultivation by the entryman matters over which this Court has jurisdiction. The determination of these matters is entrusted by Congress to the Land Office Officials and they may in their discretion issue patents to persons upon evidence of improvement and cultivation of greater, or less, value and extent, the extent and value of the improvements being solely in their discretion. Conceding that the Court may set aside a Patent upon proof of perjured testimony, yet the *averments* of the Bill certainly must be *specific* and the *facts* set forth *must be those* that were contained in the *final proof* upon which the Patent was issued, and *it is essential* to follow such statement of facts by the averment that *they are untrue*. 2 Pomeroy Eq. Jur. 3 Ed. Sec. 882.

The Patentee upon final proof (R. 62, 63 and 74) testified in answer to question four that he established a residence about March 10, 1901, a small dwelling house and garden of about one-half acre, all worth $10-00. And in answer to question five, "Of whom does your family consist; and have you and your family resided continuously on the land since first establishing residence thereon?" He answered, "Myself and wife. No, not continuously, that is, not every day and every night." And in answer to question six, "For what period, or periods, have you been absent from the homestead since making settlement, and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during your absence?" He answered, "Was absent two or three times, not over three months at the longest period on account of my wife's health. She is very feeble and the land is so low and wet that it was impossible to keep her on the land all the time." And in answer to question seven, "How much of the land have you cultivated each season and for how many seasons have you raised crops thereon?"

He answered, "About one half acre for two seasons." And his witnesses testified to the same state of facts. Compare these statements of fact with those facts set forth in the Bill, excluding of course, the mere legal conclusion, and we find them practically identical. If they are identical in substance, then the Government could not have followed their statement by the averment that they were untrue. And without such averment the Bill is insufficient. The bill does not aver that the entryman was absent for periods exceeding three months, that his wife was not ill, as alleged; that he had not cultivated one-half acre; that he had not erected a log house, nor that the value of the house and the improvements altogether were not worth $40.00. Where then is the fraud, *or even the false testimony? These were the facts set up in the final proof, which are the same as stated in the Bill of Complaint.* It may be true that the improvements are exceedingly *limited* in their *extent and value* but it may be *equally true* that they were as *extensive* as the *means of the pioneer entryman would permit* and may we not presume that they are since the Government in its effort to set aside the Patent *has not attempted to show the contrary.* But this, as above stated, is not for this Court to determine, the value and extent of the improvements being solely within the discretion of the Land Office Officials. As stated in the case of Wiseman vs. Eastman, *supra*, which is in harmony with all the decisions, "Courts will not review a decision of the Land Department on the ground that the *evidence was insufficient*, or that *incompetent evidence* was before it, as the power of the Department to try questions of fact embraces the power to pass on the weight and competency of evidence." 57 Pac. 398.

And if the facts set forth in the Bill of Complaint are the same as those set forth in the final proof and upon which the patent issued the title passes absolutely out of the Government to the Patentee and the Court has no jurisdiction to annul, or cancel, the patent, and

in such case the question of whether the title is yet in the hands of the Patentee, or his grantee, with or without notice, is therefore, immaterial.

2. *Do the facts proven by the Government sustain the averment that the final proof of the entryman was false and untrue?*

If the averments of the Bill may be considered to be sufficient to give the Court jurisdiction, then it is incumbent upon the complainant to support the averments by proof that is positive and unequivocal. The right of the Court of Equity to annul a patent is an extraordinary remedy and its expensive machinery can be set in motion in such cases only when the evidence clearly establishes the right to the relief. The deliberate action of the Land Office Officials, the tribunal to which the law has granted the determination of preliminary questions and the disposition of public lands, as well as the control of the processes by which the titles to the land shall be conveyed, demand that to set aside and annul their action by the cancellation of a patent by them granted and to destroy the title claimed under it, the facts upon which this action is asked must be clearly established by evidence entirely satisfactory to the Courts and the case must be within the class of cases for which such an instrument may be avoided. As it was said in the case of the United States vs. The Maxwell L. G. Co. 121 U. S. 325; 31 Law Ed. 434, by Justice Miller, "Such power of equity can be exercised *only on specific averments* of the mistake or fraud, supported by *clear* and *satisfactory* proof. The general doctrine of this subject is that when a Court of Equity is asked to set aside a patent for fraud, or mistake, the testimony on which this is done must be clear, unequivocal and convincing and can not be done *upon a bare preponderance* of evidence which leaves the issue in doubt." And in the case of Atlantic Delaine Co. vs. James, 94 U. S. 207; 24 Law Ed. 112, Mr. Justice Strong in delivering the opinion, said that, "Such power ought not to be exercis-

ed except in a clear case, and never for an alleged fraud, unless the fraud be made clearly to appear; never for alleged false representations, unless their falsity is certainly proved and unless the complainant has been deceived and injured by them" The same rule is laid down by the following authorities:

U. S. vs. Stone 69 U. S. 525:17 Law Ed. 765.

U. S. vs. Trockmorton 98 U. S. 61.

Story's Equity Jur. Sec 157.

U. S. vs. American Bell Tel. Co. 167 U. S. 223:42 Law Ed. 144.

U. S. vs. Budd 144 U S. 154:36 Law Ed. 384.

Col & Co., vs. U. S. 123 U S 307:31 Law Ed. 182.

The effort of the Government seems to be based upon the assumption that it is within the jurisdiction of the Court to relitigate questions of fact, that is, to determine whether or not, the improvements and residence of Ward, the Patentee, as stated in the final proof, were sufficient for the Land Office Officials to have granted, upon the proof, the patent. But this, in the prior division of our brief, we have shown clearly, in our opinion, not to be within the power of this Court. If the Land Office Officials were satisfied that the evidence, as given by the Patentee, was sufficient and that the dwelling house and garden of one-half acre, all worth about $40.00 was sufficient as to the improvements, then their determination thereof is conclusive and there is no law which will authorize a review of that decision, except by appeal to the superior officers of the Land Department. Unless, then, it can be shown that the facts in the final proof of the entryman were untrue and without their untruth the patent would not have issued then, this court will have no jurisdiction to cancel the patent. And even upon appeal from the decision of the Register and Receiver in the Land Department to the superior officers the decision of the former on questions of residence and improvement will not be disturbed, except in very clear case of positive and insufficient

evidence of facts relative to residence and improvements. Otherwise the very purpose of Congress and the Statutes, governing the disposition of public lands to have them go to *bona fidei* settlers, irrespective of the value and extent of the improvements, would be avoided. The Statutes governing the disposition of public lands require neither a limited amount of improvement, nor an absolutely continuous residence Evidence of the amount of improvements could only be used, when admissible at all, even by the Land Department, as evidence to detract from the good faith of the entryman. But when the entryman has clearly set forth the amount of the improvements, however small, and the Department has issued patent thereupon, then the question of amount, or extent, is forever put at rest. While relative to residence, temporary abandonment for the purpose of earning a livelihood, or support for the entryman's family, or to secure funds with which to make improvements, or on account of sickness, as in the case at bar, is permissible. The very purpose of the law was to segregate and give a part of the great public domain to the poor man and the poorer classes of citizens and the value, or amount of improvements is, of course immaterial, except as above stated, and then only when accompanied with evidence of the ability of the entryman to make more improvements than in fact were made. But in this case there is no attempt to show that the improvements were not equal to the means and ability of the entryman, nor is their any attempt to show that the residence was not as continuous as the conditions and means of the entryman would permit. As was said by the Honorable Secretary Smith, of the Land Department, in the case of Hunter vs. Blodgett, 20 L. D., 452, text 455, "But as both parties have acted in good faith, the value of the improvements must not figure in this case (citing Howden vs Piper, 20 L. D. 163.) Indeed, if that were made the *basis of good faith* the *poorer settler* would have no show what-

ever with one of ample means." In the case of Hunter vs. Blodgett the issue was as to the value of the improvements, when the Secretary decided that the value of the improvements could not be made the basis of good faith. This should equally apply where the Government is the one party. If it can not be made the basis of good faith in the one case where individuals are the parties, certainly it will not be made the evidence, or basis, of bad faith in the other, where the Government is one of the parties. All of the authorities hold that when the Government seeks the aid of the Court in a civil matter, it is bound by the same rules that govern litigation between individuals (U. S. vs. White 17 Fed. text 564; U. S. vs Rose 24 Fed., 196; U. S. vs. San Jacinto T. Co., 23 Fed., 279) and this rule should be strictly followed where the facts relative to the residence and improvements showed such were equal to those of the ordinary pioneer settler, and when the evidence as in this case does not attempt to show that they were not consonant with the means and ability of the entryman, whose patent is sought to be cancelled. Therefore, if the question of the value of the improvements, or the amount and extent of the residene of the Patentee could be re-litigated in the Court, it could not be used as an evidence, or basis, of bad faith, without evidence that it was greatly less and inferior to the means and ability of the entryman. In the absence of any attempt to show such fact relative to the condition, power and ability of the entryman and in the absence of any authority in the Court to review the decision of the Land Department, the tribunal to which this question, by Congress, has been entrusted for determination, the relief prayed for can not be granted and the judgement of the Circuit Court in cancelling the patent and the mean conveyances executed thereafter, to the Appellant was erroneous. The testimony of Levy Miller (R. 59) and of George Miller (R. 60) the two witnesses for the entryman upon his final proof, is true and is corrobora-

tive of the testimony of the entryman upon his final proof. True it is, their testimony may have been vague and indefinite and insufficient relative to residence, improvements etc., but, in such event, it was the exclusive duty of the Land Office Department to have returned the final proof that it might have been properly made definite. But whether, or not, it is definite, or indefinite, as we have above stated, is a question with which this Court has no jurisdiction to deal, except it might be upon the ground of mistake and there is no averment in the Bill of Complaint that any mistake was made, the Complainant resting its grounds solely on the averment of fraud and false testimony. And there is not a word in the evidence of the entryman (R. 23 to 32) to contradict either of these witnesses, or the original proof of the entryman. The entryman, in his evidence, stated that he never did move his family upon the homestead because it was wet, low and his wife was in ill health; that he built a small house and visited the homestead himself; that the improvements, the house and the one-half acre in cultivation were all worth about $40 00, but this is precisely what he said in his final proof. And in the evidence of the Special Agent, Mr. Paul, (R. 33 to 36) we find the testimony relative to the improvements upon the final proof by the entryman.

The Government insists that this entry should be set aside because of fraud, fraudulent and untrue final proof. Yet when their star witness, Mr. Chubb (R. 21 to 49) was upon the stand in their behalf, they did not ask him his idea as to the fraud, false and fraudulent action of the entryman. They failed to ask him whether in his judgement there was any mistake and whether, or not, he, after further consideration of the matter, would have declined to have granted the Patent. They failed to ask Mr. Chubb whether, or not, he had not the authority to grant patents to entrymen upon greater, or less amount and extent of improvements and residence and whether, or not, he had not, as a matter of

fact, in many cases granted patents to entrymen whose residence and improvements were equally as limited in value and extent as that of the entryman, whose patent is now sought to be cancelled. If there was any mistake made by the Register and Receiver (the Receiver being Mr. Chubb, the witness) then the Government should have given him the opportunity at least to express his views relative to any such mistake, fraud, fraudulent and untrue testimony. The very first principle and element necessary to aver, in order to give a Court of Equity jurisdiction over mistake, fraud and fraudulent conduct, is to aver that the party seeking relief suffered pecuniary loss or damage by such conduct. Neither courts of equity, nor courts of law lend their aid as mere tribunals of consience to enforce duties purely moral. 2 Pomeroy Eq. Jur. 3 Ed Sec. 898. And upon these averments must be positive and unequivocal evidence to support them. In this case where the United States Government is the complainent, who was in better position to testify as to any fraud, fraudulent and untrue testimony and its, if any, resulting pecuniary loss or injury to the Government than the Honorable Henry S. Chubb, the Receiver acting jointly with the Register, who issued the patent upon this testimony of the patentee. It was held Colorado Coal & Iron Co., vs. 123 U. S. 307; 31 Law Ed. 182, that, "Where the Government failed to produce all the proof of which the case in its nature was susceptible and which was within its reach a decree cancelling the patent should be reversed," and the excuse for failing to give the Register and Receiver opportunity to testify as to the fraud was not considered valid in the case Colorado C. & I. Co., *supra*, 31 Fed., U. S. text 188.

That the entryman after a period of fourteen months concluded to commute and that he afterwards sold the land is, in this case, not material, nor the evidence that part of the money, or even all of it, with which the entryman paid for his cash entry came from

McCaskill material. Evidence of such facts can be used neither against the entryman, nor against his grantee. The law does not prohibit and is not direct against the sale of the land, nor against a loan to the homesteader, but rather against a *prior agreement* by reason of which directly, or indirectly, the title which may be secured from the Government should go in whole, or in part, to a third person. After Ward, the entryman, had complied with the Statutes for a period of fourteen months he became the owner of a vested right, which he had a right to sell, or encumber in any manner which he saw fit, and it could be divested only by the decision of the Land Office that he had not complied with the Statutes. And any sale, or lien, which he might have placed upon the land after the expiration of the required period of fourteen months is as equally binding upon him as one executed subsequent to the delivery of the patent. 1 Gould & Tucker's notes U. S. Statutes Pp. 538; Larson vs. Weisbecker 1 Land Dep. 409; Lewis vs. Witherell 36 Minn. 386 Lewis. Much stress and effort of the Government is directed to the manner in which Ward secured sufficient funds from "his banker," McCaskill, with which to pay for the entry and equally zealous effort is made by the Government to show that a large number of patentees had promptly transferred their title to McCaskill, but all of this is immaterial. A parallel case is that of the United States vs. Budd, 144 U. S. 154;36 Law Ed. 384, text 386, in which Budd, the Patentee, sold to Montgomery, the evidence showing that Montgomery had made a large number of similar purchases and relative to which Justice Brewer said, "But surely this amounts to little, or nothing. It simply shows that Montgomery wanted to purchase a large body of timber land, and did purchase them. This was perfectly legitimate, and implies, or suggests, no wrong. The act does not in any respect limit the dominion which the purchaser has over the land after its purchase from the Government, or

restrict in the slightest degree his power of alienation. All that it denounces is a prior arrangement, the acting for another in the purchase. If when the title passes from the Government, no one save the purchaser has any claim upon in, or any contract, or agreement for it, the Act is satisfied. Montgomery might rightfully go, or send, into that vicinity and make known generally, or to individuals, a willingness to buy timber land at a price in excess of that which it would cost to obtain it from the Government; and *any person* knowing of that offer *might rightfully go* to the Land Office and make application and purchase a timber tract from the Government, and the facts above stated point as naturally to such a state of affairs as to a violation of law by *definite agreement* prior to any purchase from the Government point to it even more naturally, for no man is presumed to do wrong, or to violate the law and every man is presumed to know the law.... ..... And even if Montgomery had violated the Statute with another patentee in other cases, still that testimony would only cast suspicion in here and suggest only possibility of wrong. Because a party has done wrong at one time in one transaction, it does not follow that he had done wrong at other times in other transactions." So it is with the Patentee, McCaskill and the Appellant. After Ward, the Patentee, had made his entry and resided thereupon for a period of fourteen months he had an absolute right to make a cash entry and to dispose of it at his discretion. And the Appellant, like Montgomery, had the right to buy and the fact that he bought, or the fact that the Patentee sold at such time, can not be used to detract from the good faith of either. Furthermore, the Government here seeks a forfeiture, that which the Court of Equity has always steadily declined to grant any individual. An individual in this case would fail for two reason: first, he could not aver and prove that he suffered an injury: second, if he did, the Court would decline to declare a

forfeiture. Has the Government suffered an injury? No. It received from the entryman every cent it was possible for it to receive under the Statutes from any party. There can, therefore, be no pecuniary injury to the Goverment. The most that could be said is a violation of public policy and a moral wrong. And measured by the rules governing litigation between individuals the Government here, also, as in the case of U. S. vs. White, 17 Fed. 561 and U. S. vs. Thockmorton, *supra*, should fail. And if equitable jurisdiction may be conceded the Government in such cases, rather than leaving it as between individuals to resort to the prosecution of the pantentee for prejury, certainly, as was said by Justice Brewer in the case U S. vs. Budd, *supra*. The hardship of such a result, so different from that which is always employed in suits between individuals, makes it imperative that no decree should pass against the defendant unless the wrong be clearly and fully established." Not only is there the lack of positive and unequivocal evidence of any fraud, fraudulent and untrue action on the part of Ward, an essential pre-requisite, but also there is a lack of facts from which such a conclusion can be reasonably drawn. The fact that the entryman did his "banking business" with McCaskill, the grantor of Appellant, and that he especially desired to have a net profit of one hundred dollars, not only does not satisfy the rule as to the quality of evidence required before the judgement of the Land Department and the solemnity of the patent issued thereupon can be attacked, but rather it suggests a presumption in favor of the patentee that such action was subsequent to the expiration of the fourteen months. And if so, such acts were unquestionably within his rights. And if they might have been before, there is still a lack of evidence of a prior agreement for this disposition of the land and it is against this alone that the Statutes are directed. This we think is amply supported by the authorities above cited.

As a part of this division of our brief, though probably it would have been more appropriately discussed under the first division relative to the sufficiency of the averments of the Bill of Complaint, we think another fatal defect is that the suit is not properly brought. While this may not go on the merits of the cause, still, in our opinion, it is equally as fatal. Neither the Bill of Complaint, nor the evidence show to the Court that the Attorney General of the United States has, either directed or sanctioned the institution of the suit, without which its institution was unauthorized. A parallel case is that of the United States vs Trockmorton, *supra*, 25 Law Ed. U. S. text 96, in which Justice Miller said, "We are of the opinion that, unless by virtue of an Act of Congress, no one but the Attorney General, or some one authorized to use his name can bring a suit to set aside a patent issued by the United States, or a judgement rendered in its Courts on which a patent is founded. Nothing in the Bill indicates that it was brought by the direction, or sanction, of the Attorney General, but construing it liberally, it is clear that it was brought by the District Attorney and not by the Attorney General. Leaving out of consideration all mere questions of form, there arises no presumption from the Act of Congress which gives the Department of justice a general supervision over the District Attorney that this suit was brought by his direction; for the District Attorney brings innumerable suits, indictments and prosecutions in which the United States is plaintiff without consulting the Attorney General, and this we think in the strict line of his duty, but in this class of cases, both the English and American Courts require the name of the Attorney General as endorsing the suit before it will be entertained. The reason is obvious; namely, that in so important a matter as impeaching the grants of the Government under its seal, the highest law official should be consulted, and should give the support of his name and authority to suit. He should,

also, have control of it in every stage so that if at any time through its progress he should become convinced that the proceeding is not well founded, or is oppressive, he may dismiss the Bill ..... It should be a very dangerous doctrine, one threatening the title to millions of acres of land held by patent from the Government, if any man who has a grudge, or a claim against his neighbor can, by idemnifying the Government for cost and furnishing the needed stimulus to a District Attorney, institute a suit in Chancery in the name of the United States to declare a patent void. It is essential, therefore, to such a suit that it be by the sanction and direction and under the control of the Attorney General." Aside from all the other questions involved in this issue then, if we follow this rule laid down by Justice Miller of the Supreme Court of the United States the Bill of Complaint and the evidence is fatally defective and the judgement of the Circuit Court must, because of such defect, be reversed.

3. Will this Court review decisions by the Land Office Officals upon questions of fact?

All the authorities are agreed that when the law confides to a special tribunal the authority to hear and determine certain matters arising in the course of its duties the decision of that tribunal upon the facts within the scope of its power is final. They are, also, in accord that the action of the Land Office, in issuing a patent on controverted facts for any of the public lands is conclusive, not only in the Land Department, but also in all Courts and every where else, except for fraud and that it is *only* when the Land Department has *misconstrued the law* that the Courts have power to relieve.

Johnson vs. Towsley 13 Wall. 72;20 L. Ed. 485.

Diller vs. Hawley 81 Fed. 651;26 C. C. A. 514.

Iron S. M. C. vs. Campbell 513 U. S. 303;34 L. Ed 161.

4. Does the Appellant occupy the position of an innocent purchaser and is the Government precluded

because of his rights as such?

The authorities are in accord that, after the Government has issued and delivered the patent, the legal title passes to the patentee and that *bona fide* purchasers without notice of mistake, or fraud, get a perfect title. The defense of a *bona fide* purchaser, for value without notice, to a Bill in Equity brought to cancel a patent, is perfect. His title rests upon the strongest presumption of fact, to rebut which requires clear, full, convincing and un-ambiguous proof.

Colorado Coal & Iron Co., vs. U. S., 123 U. S. 307; 31 L. Ed. 182.

U. S vs. Burlington etc., R. R. 98 U. S. 342, 25 L. Ed. 198.

U. S. vs. Calif. & Ohio L. Co. 148 U. S. 31; 37 L Ed. 362.

U. S. vs. Dalles Military K. Co. 148 U. S. 49;37 L. Ed. 354.

The rights of an innocent purchaser, however, do not attach to purchases made prior to the actual issuance of patent so as to preclude the Land Department from deciding adversely to the entryman. This is upon the principle that until the patent issues the Land Office Officials still have a right to pass judgement upon the issues involved relative to whether, or not, the entryman is entitled to a patent.

American Mortgage Co. vs. Hopper 64 Fed. 553; 12 C. C. A. 293.

Diller vs. Hawley 84 Fed. 651; C. C. A. 514.

But the latter proposition is not involved in this case, for here the purchase was made after the issuance of the patent and we have been able to find no contradiction in the authorities that in such cases the rights of the innocent purchaser attach and that it is a complete defense, equally against the Government as against individuals. And in Colorado Coal & Iron Co., vs U. S. *supra*, where the Government was succesful in having the patent cancelled was reversed by the Supreme

Court of the United States because of the defense and rights of the defendants as innocent purchasers. And Justice Matthews in the case said that even though the evidence showed there had been no actual settlement upon the lands as required and as stated in the affidavits of final proof, yet the defense of the *bona fide* purchaser was perfect. (31 L. Ed. U. S. text 185.)

McCaskill in his evidence (R. 36 to 39) testified positively that he had no knowledge that the entryman had not complied with the Statute and there is no evidence to contradict this positive testimony. The only possible basis that we are able to discover in the testimony for the contention of the Government that the Appellant is not an innocent purchaser is that Warren Ward was the agent of McCaskill and of the Appellant. But even if he were such agent, there is no testimony, either in that of the witness Warren Ward, of the patentee, or of Paul, that would show that any reference to the indefinite agreement was made *prior to the expiration* of fourteen months after the entry. But the contention of the Appellant is that Warren Ward was not a general agent so as notice to him would bind the Appellant. It is, also, contended that the evidence does not show that he has not complied with the Statute. He knows that there was a small house built, that one-half acre had been cultivated and that he had seen his father upon the premises, but from this we can not conclude that he knew his father had failed to compiy with the Statute—a mere legal conclusion which the Land Office has the right to draw. Upon this very testimony too the Land Office Officials granted the patent. And the question of whether he had, or had not, complied with the Statute is not a question of fact, but a question of law equally with the question of whether, or not, a person is or is not a resident of a particular locality. (12 Enc. P. & P. 1030, 1033 and note 1028 and 1038.) No knowledge of any fact is shown in the testimony of Warren Ward to contradict any systement of fact of the

final proof of the entryman. Testimony of all other question of fact was clearly not admissible and if any such existed his full knowledge thereof is not material because, in the light of the authorities already cited, when the Land Office determines upon questions of fac that one is entitled to a patent and thereupon issues it, their decision *is conclusive*, unless it can be shown that *some statement of fact upon which they acted and without which the patent would not have issued, is false.* That the testimony was vague, indefinite or incompetent upon which the patent was issued is not for this Court to relitigate. *And upon this proposition the Government cannot show a contrary decision.*

And if it be considered that Warren Ward did know of any facts sufficient to preclude *him* from being an *innocent purchaser*, he was not such an agent as would bind the Appellant. He was the agent only of McCaskill, who subsequently transferred part interest to his son, R. E. L. McCaskill, and they jointly in turn transferred their interest to Appellant, for the purpose of buying logs, and not for the purpose of doing, or aiding in the doing, of any fraudulent, or unlawful act. It is true that the acts of the agent within the scope of his authority, whether, for a general or a special purpose, bind the principal, and notice to the agent in a matter about which he was employed, and within the scope of his employment, is constructive notice to the principal. But the exception to the rule is that if the agent is acting in a matter in which he has a personal interest, or in connection with which he is interested with a third person, the presumption is that he will not communicate the fact in controversy. And the rule should be more rigidly applied in case of fraud or torts.

1 Ency Law (2 ed) 990, 1145, 1146 and 1148.

Clark vs. Metro. Bank 3 Duer (N. Y.) 241.

Frenkel vs Hudson 82 Ala. 162; 60 A. Rep. 736.

Allen vs South B. R. R. Co., 150 Mass. 206; 15 A. S. R. 185.

Innerarity vs. Mer. Natl Bank, 139, Mass. 332, 52 A. R 710

In Frenkel vs Hudson, *supra*, Justice Sumerville said; "The rule has no application where the agent acts for himself or for a third person. His adversary character and antagonistic interests takes him out of the operation of the rule for two reasons: 1, that he will act for himself rather than for his principal; 2, he will not communicate to his principal a fact which he is interested in concealing. It would be both unjust and unreasonable to impute notice by *mere construction*, under such circumstances, and such is the established rule of law."

The rule applies to corporations, where the officer is personally interested. There is no conflict in the anthorities upon this proposition.

Innerarity vs. Merchants Nat. Bank 139 Mass. 332; 52 Am. R. 710.

Atl Nat. Bk. vs. Harris 118 Mass. 147 & Loring vs. Brodie 134 Mass. 453.

Highstown Bank vs. Christopher 40 N. J. L. 435.

And to hold otherwise would not only violate the harsh rule of constructive notice must be strictly followed, but also sanction gross frauds by the officers of the corporation by imputing to it a knowledge which those properly representing it could not have possessed. A *personal interest conflicts entirely* with the idea that *he represents* the *interests of the corporation*, and to permit a contrary rule would do great injustice to the remaining innocent directors and the interests they represent. So, if Warren Ward did have any knowledge of any facts of a fraud on the part of the entryman, the entryman being his father, would not his interest, position and relationshhip forbid that he should be treated as the representative of McCaskill; and in turn after McCaskill became the owner of the land the law, *without conflict in the authorities*, conclusively presumes that he would not communicate any fraudulent scheme to the corporation, and therefore, forbids that the corporation should be

bound by his knowledge of the fraud connected therewith. And the Government has not attempted to show that the corporation, *The J.J. McCaskill Co had any notice except that which was derived through J. J. McCaskill.* If his knowledge was not notice, because of his personal interest, then the Government *must fail, irrespective of all the other issues involved,* which we have discussed. And the judgement of the Circuit Court, if for no other reason, should be reversed.

Respectfully submitted,

WM. W. FLOURNOY.

Office Supreme Court, U. S.
FILED
JAN 29 1910
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States

THE J. J. McCASKILL COMPANY,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

No. 321
October Term,
1909, No. 103.

Appeal from the United States Circuit Court of Appeals, 5th Judicial Circuit at New Orleans, La.

Supplemental Brief of William W. Flournoy, of Counsel for Appellant.

WM. W. FLOURNOY,
Counsel for Appellant.

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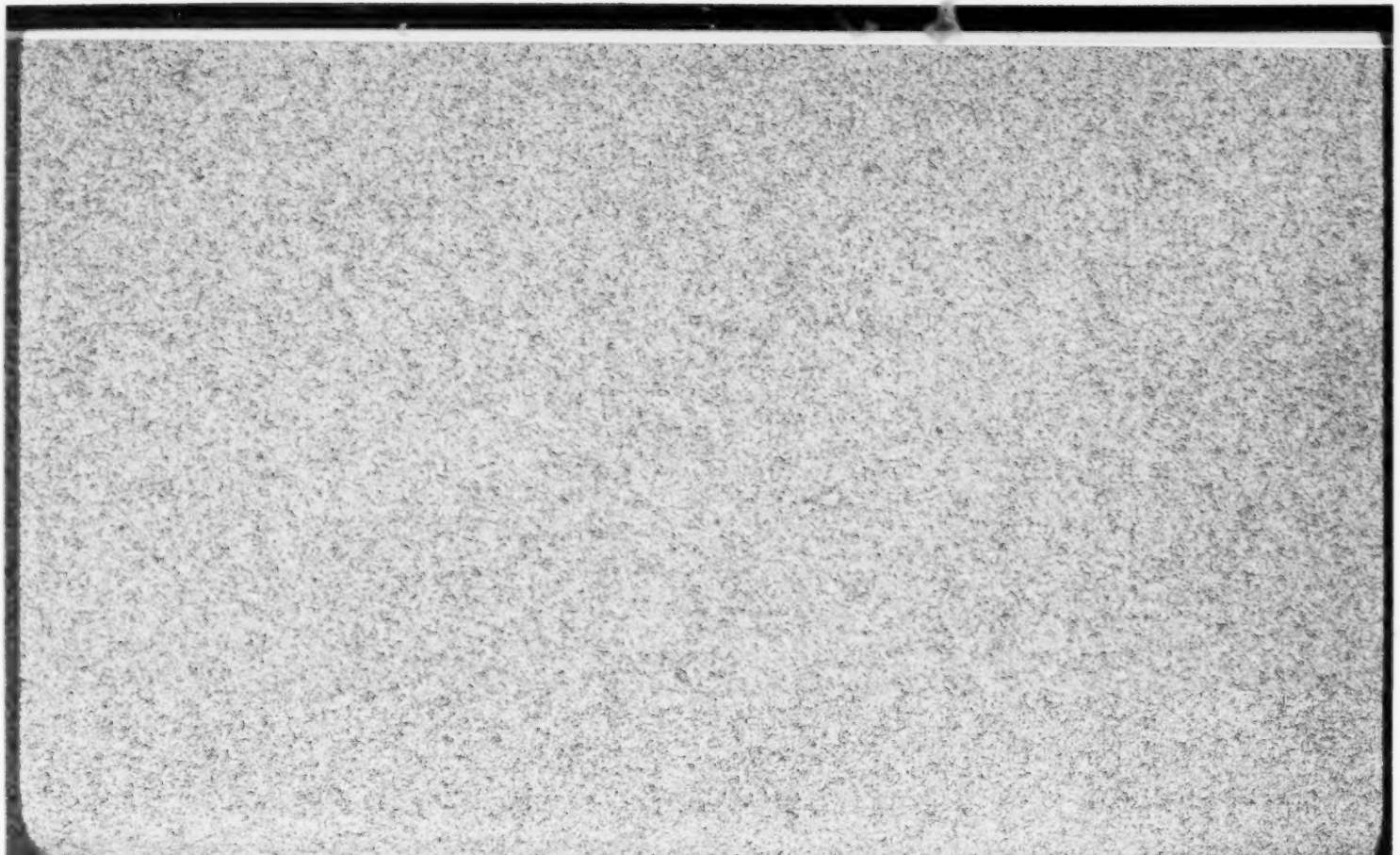

In the Supreme Court of the United States

THE J. J. MCCASKILL COMPANY, *Appellant,*	No. 321
vs.	October Term,
UNITED STATES OF AMERICA, *Appellee.*	1900, No. 103.

Appeal from the United States Circuit Court of Appeals, 5th Judicial Circuit at New Orleans, La.

Supplemental Brief of William W. Flournoy, of Counsel for Appellant.

STATEMENT

In the argument of this case on the 25th instant, the Government, through its Assistant Attorney General, Mr. Charles W. Russell, suggested matters which we briefly in the oral argument replied to by references to the facts as shown by the record and to the principles of law applicable thereto, still, and because of the questions coming from the members of the court at the time, we may be pardoned for asking the privilege of submitting briefly this supplemental reference to such suggestions. The Government, through its attorney, Mr. Russell, laid great stress on his statement

that there was "gross palpable fraud" on the part of both the patentee and the appellant corporation and also upon his statement that there "was no such deed as the deed from McCaskill & Co. to The J. J. McCaskill Company." Both of these statements, notwithstanding appellant's counsel cited Mr. Russell to pages 108 and 109 of the record, were repeated, and such we respectfully submit have no basis in the record and evince, as we think, either ignorance of the record, or an intent to deceive the court, and either horn of the dilemma is inconsistent with the position which the Government should take. It is the duty of the Bench and the Bar both alike, to establish the truth, to seek the administration of justice upon well established rules, whether or not the case is won or lost. And it is somewhat significant to note that the question of Mr. Justice Lurton of this court during the oral argument is practically a duplicate of the question of Judge Pardee, of the Circuit Court of Appeals of New Orleans, which the latter propounded to counsel during the oral argument there, namely: *What*, or *where is the fraud complained of?*

And presumptively because he dissented Judge Pardee was not able to find the fraud complained of, except in the bare legal conclusions of the Government's pleading and broad assertions of counsel.

The third contention of Mr. Russell for the Government is that this court will not re-open and try for the third time questions of fact which have been determined by the court below and that the rule is based upon the proposition that there ought to be an end to litigation and that parties should not be allowed to hope for a successful appeal by reason of mere differences of opinion about conclusions upon the facts.

That we may have a clear conception of the facts stated by the record, let us briefly refer to them:

William Josiah Ward was the homesteader; Warren Ward was his son and the alleged agent of J. J. McCaskill; J.

J. McCaskill and R. E. L. McCaskill were members of and constituted the partnership of J. J. McCaskill & Co., and subsequently, about the 1st of October, 1903, J. J. McCaskill & Co., with other directors and stockholders, were incorporated under the name of The J. J. McCaskill Company; the homestead affidavit was made 8 Sept., 1900; the final proof was made 29 Dec., 1902; the patent was issued June 5, 1903; the deed from Ward to McCaskill was executed 4 Sept., 1903; and subsequently (the date not given by the record) McCaskill & Co. deeded to the corporation.

It is the contention of the appellant that there is no *fraud* anywhere, either by the homesteader, the alleged agent, McCaskill & Co., or the corporation; that even if there may be technically and in law fraud as between the Government and the patentee, there is not the slightest connection to charge J. J. McCaskill with knowledge of the fraud; that even if there is fraud sufficient to charge parties down to the patentee's grantee, namely, McCaskill, then there is no connection charging constructively or otherwise fraud upon the *corporation* of which J. J. McCaskill was president; that if the facts as stated in the final proof, though they may show carelessness on the part of Local Land Office Officials and the Department of the Interior and show but small improvements on the land by the homesteader, still *such showing* would not be sufficient to constitute a cause of action in behalf of the Government to set aside the patent even against the *patentee* himself, even if the position of innocent purchaser was not in issue.

ARGUMENT.

Notwithstanding the fact that we suggested to Mr. Russell during his argument before this court that the chain of title was set up in the amendment to the bill and the amendment to the answer, and then and there referred him to pages

108-109 of the record, still he persistently read the second question from the top of page 37 and also Section 6 of the original bill (R. 5) to support his repeated statement that, "there was no such deed as the deed from McCaskill to the corporation," and to support his persistent effort to impress the court, as he stated, "that the deed from the patentee Ward to J. J. McCaskill was the only deed that was ever made and that such was taken in the name of J. J. McCaskill for the corporation." The question which he read was (R. 37):

> "Any interest the corporation has in it is that derived from this deed?"
> "A. Yes, sir."

Just prior to this question, as well as following, it is clearly manifested that the purpose of the Government and the intent of the witness *was not to show that this was the only deed executed*, but that the *interest of the corporation* in the land was derived through *mean conveyance* from the *deed from Ward*, the patentee, to J. J. McCaskill. McCaskill stated this in so many words and that it was his recollecttion he deeded a part of it to his son, who was, as the record shows, a member of the partnership of J. J. McCaskill & Co. This is only not a fair interpretation of even this segregated question and answer, but also it was unfair and an imposition under such facts to undertake to call in the equitable principle that a deed taken in the name of one party for another will be construed in equity as belonging to the latter. The record shows clearly that Section 6 of the original bill was amended (R. 108) solely for the purpose of setting up chain of title, going as above stated from Ward to McCaskill, McCaskill to the partnership of McCaskill & Co., and McCaskill & Co. to the corporation, The J. J. McCaskill Company. The court suggested that

the deed from McCaskill & Co. to the corporation was not in the record. It was not necessary for it to be in the record, because the amendment to the bill and the amended answer (R. 108-109) clearly set up and admitted the chain of title and mean conveyances. Mr. Russell in his argument read Section 6 of the Bill of Complaint (R. 5) but refused to read the amendment thereof, as shown by R. 109. Besides, every part of the record shows clearly that the Government and the defense understood all of the mean conveyance as above stated. Even the final decree by Judge Swain (R. 110-111) so manifests.

This we think sufficiently disposes of Mr. Russell's contention, founded upon a trained and assumed construction of the second question on page 37, which construction is clearly repugnant to plain perception and inconsistent with the clear language of the question and answer, even without reference and connection with the other part of the testimony of the same witness, from which such question was segregated.

Mr. Russell in his oral argument further stated:

> "It has been admitted here that McCaskill had notice of the fraud, and the record also clearly shows it."

No word of counsel for the appellant in the oral argument could possibly have been so misleading. What counsel did say was that McCaskill, neither individually, nor as a member of the corporation, had any notice whatever of any fraud sufficient to put him even upon inquiry, and that if he did, which we suggested solely for argument and illustration, J. J. McCaskill & Co., of which he was a partner, had none, and if either or both of them had such notice, *The J. J. McCaskill Co.*, of which McCaskill was *president*, had no such notice. Record 36 to 41 shows the testimony of McCaskill, every word of which positively and unequivo-

cally denies any knowledge whatever, directly or indirectly, of any fraudulent transaction and denies that he ever saw the homestead location, and denies that Ward told him or suggested to him anything improper on the part of his (Ward's) father. And there is not a syllable of a single witness that contradicts McCaskill in his testimony in this record. Ward, for years, had lived in that vicinity and for the same length of time McCaskill had been his banker (R. 27), with a balance always due to Ward, and for years, as Ward himself testifies, no statement had been issued or had and he always got money when he called for it. It was sought also to support the allegation by evidence that Ward learning of the opportunity to sell, suggested that he would sell if he could secure about $100 profit. *Where is the fraud in this?* It was no objection to the homestead law for Ward, learning of an opportunity to sell, to make arrangements so to do; neither was it objectionable as against the statute for McCaskill to send into the territory notice of the fact that he was open to the purchase of timber lands, etc. This was clearly established by the decision of this court in the case of Budd vs. United States, 144 U. S., 154.

The third statement of Mr. Russell in the oral argument, as also referred to in his printed brief, was that this court was bound by the decision below because of its alleged well settled rule not to allow parties to open up litigations seeking successful appeal from differences of opinion upon conclusions of facts.

This broad statement is too general to be applicable to anything. Taking the statement literally, we confess that it would be well to adhere to it, but what idea in the case at bar does it convey and what interpretation are we to give to it when applied to the facts exhibited by the record? If it is meant that it shall be ironclad and invulnerable whether

the decision below is right or wrong, facts or no facts, then of course it is clearly inconsistent with our American institutions. Suppose there are no facts—no proof of an essential averment—which we contend is precisely the predicament exhibited by the record will he seriously contend that this court would not grant relief against such opinion? Appellate courts are for the correction of errors and to harmonize differences of opinion of lower courts and to guarantee that their opinions shall be consistent with law and based upon facts. That Judge Pardee dissented, also suggests that there must be some misconception of both the *law* and *facts*. Such an interpretation as is sought to prevent the reversal of only the *majority* opinion of the court below, is clearly not only not the rule of this court, but also this court we respectfully suggest, in analyzing the facts shown by the record and the law applicable thereto, will give for the purposes of this case sufficient respect to the opinion of the court from which this appeal is taken, by letting it be merely persuasive and not conclusive.

As was held in the case of Quinby vs. Conlan, 104 U. S., 420, the finding of the jury is only advisory and the court may disregard it and follow its own judgment upon the evidence. If there were any *contradictory testimony* or if we could find the slightest vestige of evidence of fraud chargeable either to McCaskill, or to the corporation of which he was president, we would be willing to let the opinion of the Trial Judge, Judge Swayne, and that of the Court of Appeals be final, though the latter was only a majority opinion. But when we can find no such evidences we respectfully contend that this court ought to do nothing further than to let the opinion below be merely *advisory* or *persuasive*, and in doing so, in making its careful analysis of the record, it will follow the rule so well expressed by Justice Brewer, in the case of Clyatt vs. United

States, 195 U. S., 721, when he said: "Only in the exact administration of the law can justice be done and the confidence of the people in the judiciary be maintained." And gave Clyatt his liberty, notwithstanding both the trial court and the Circuit Court of Appeals held him guilty upon the *facts;* and notwithstanding the submission of the *facts* to the Supreme Court in his case was purely accidental because as to doubt upon question of *law*. Yet the Supreme Court said there *were no facts*—not a scintilla to support the charge of peonage against Clyatt. Fortunately for *Clyatt* his case by *accident* got the opinion of this court upon the facts, and fortunately for *The J. J. McCaskill Co.*, the appellant here, is it that the rule is not as claimed by Mr. Russell and the framers of our Constitution and laws thoughtfully safeguarded individual rights by giving this court appellant jurisdiction.

As was said by Justice Field in the case of Quinby vs. Conlan, 104 U. S., 420-428:

> "For mere errors of judgment as to the weight of evidence of these subjects by any of the subordinate officers, the remedy is by appeal in the land department. The courts cannot exercise any direct appellate jurisdiction over the rulings of this office or of their superiors in the department in such matters, nor can they reverse or correct them in a collateral proceeding between private parties. In this case, the allegation that follows the fraudulent representations as to the settlement of the plaintiff were made to the officers of the land department, is negatived by the finding of the court. It would lead to endless litigation and be fruitful of evil, if a supervisory power were vested in the courts over the action of the numerous officers of the land department on mere questions of fact presented for their determination. It is only when those officers have misconstrued the law applicable to the case as established before the department, and thus have denied to parties *rights* which upon a correct construction would have

> been conceded to them, or where misrepresentations and fraud have been practiced necessarily affecting their judgment, that the courts can, in proper proceeding, interfere and refuse to give effect to their action."

And the same ruling was well established in the following decisions of this court:

> Johnson vs. Towsley, 13 Wal. 72 (80 U. S.) 20 Law Ed. U. S., 485.
>
> Shepley vs. Cowan, 91 U. S., 330-340, 23 Law Ed. 424-427.
>
> Moore vs. Robbins, 96 U. S., 535, 24 Law Ed. 850.

Justice Field, continuing in the opinion, Supra 104, U. S. 428, last two paragraphs of the opinion, said that in order to authorize interference by the courts, the evidence must be positive and clearly manifest and not merely sought upon allegations upon the possible finding of facts to be reached different from that reached by the land department and that if patent is sought to be canceled upon fraud, *mere general allegations of fraud* and misrepresentations are not sufficient.

Following the above authorities, we think the final proof (R. 59-64) clearly manifests that the facts shown upon final proof submitted to the land office department, though perhaps expressive of minor improvements by the homesteader, have not been disproved, except upon the most general and clearly insufficient allegations of fraud. The final proof of the homesteader (R. 63) and that of his witnesses (R. 59-64) are in harmony. He stated to the department in his final proof and to the court in his testimony, that he could not live on the place regularly, because it was low and wet and because of the illness of his wife and that he had only a small house and a garden of about one-half acre all worth $40. If he had said it was all worth but $4, the same conclusion of the land department would have been as binding

upon this court, because if it were otherwise the applicant of large means would always be successful over the man of no means, and as stated by Mr. Justice Field in Quinby vs. Conlan, *supra*, it would lead to endless litigation.

The great public domain has been set apart for settlers of good intentions and the purpose of the statute in this regard would be violated, were it not for the rule so well established by the land department in the cases of Hunter vs. Blodgett, 20 L.D., 452, Text 455, and Howden vs. Piper, 20 L. D., 163, in which it said:

> "The value of improvements must not figure in this case. Indeed if that were made the basis of good faith, the poorer settler would have no show whatever with one of ample means."

So then that Ward's improvements were little and that he remained upon the homestead but little, was before the Department of Interior and they disposed of it by issuing to him a patent. This same testimony he submitted to the court. By what rule of reasoning and where is the authority for this court to re-open and re-litigate a case founded upon such facts? Clearly such questions by both reason and the authorities are left for disposition by the land department and their determination of them, though another tribunal, or this court might find differently upon the same state of facts, is final.

And whatever may be the purpose or intent of the homesteader, however grave may be his fraud perpetrated upon the Government, such, in the absence of fictitious parties at least, does not cut off the right of the *bona fide* purchaser.

> Colorado Coal & Iron Company vs. United States, 123 U. S., 307, 31 Law Ed. 185.

> In United States vs. Minor, 113 U. S., 233, 29 Law Ed., 110 and 114, this court said that

it was going far enough to hold that the title could be assailed, *when there were no innocent purchasers involved.*

The next proposition to which we briefly refer is that even if there were fraud and even if McCaskill had such a notice as would charge *him* constructively, *he* being the grantor of the *corporation* and therefore having adverse interest could not transmit that *constructive fraud* to the corporation. That he was the *grantor* of the corporation cannot be denied (R. 108-109).

Barnes vs. The Trenton Gas Light Co., 27 N. J. Eq. 33.
Frenkel vs. Hudson, 82 Ala., 162, 60 Amer. Reports, 737.
Allen vs. South B. R. R. Co., 150 Mass., 206, 15 Amer. State Reports, 185.
Innerarity vs. M. Natl. Bank, 139 Mass., 332, 52 Amer. Reports, 710.

In Frenkel vs. Hudson, Supra, by Justice Somerville, the court said that the rule of constructive notice has no application where the agent acts either for himself or a third person, because:

1. The agent will act for himself rather than for the principal.

2. He will not communicate to the principal a fact which he is interested in concealing.

In Barnes vs. The Trenton G. L. Co., Supra, the Supreme Court of New Jersey said the rule of constructive notice to the agent has no application to a case of a *sale* to a *corporation* by *its president* of property purchased by him in his private capacity; in such a transaction, the officer in making the sale and conveyance stands as a stranger to the company.

These cases are precisely parallel to the one at Bar. There is no attempt to show that the corporation, of which Mc-

Caskill was president, had other than constructive notice of the alleged fraud, without which, irrespective of the other questions involved, even if there were evidence of the alleged fraud, as to the patentee and others the appeal in this case should be successful.

Respectfully submitted.

WM. W. FLOURNOY,
Counsel for Appellant.

January 26, 1910.

Office Supreme Court, U. S.
FILED,
JAN 24 1910
JAMES H. McKENNEY,
Clerk.

No. 103.

In the Supreme Court of the United States.

OCTOBER TERM, 1909.

THE J. J. McCASKILL COMPANY, APPELLANT,

v.

THE UNITED STATES.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1909.

THE J. J. MCCASKILL COMPANY, appellant,
v.
THE UNITED STATES.

No. 103.

BRIEF FOR THE UNITED STATES.

This is an appeal from a decree of the United States Circuit Court of Appeals for the Fifth Circuit affirming a decree of the United States Circuit Court for the Northern District of Florida, overruling motions to strike out evidence and declaring void and ordering surrendered for cancellation a patent of the United States (also two deeds) to a tract of public land claimed as the homestead entry of Wm. Josiah Ward.

The bill of complaint of the United States alleged fraud in procuring and commuting the homestead.

The lower courts did not deliver an opinion, for the reason, as we suggest, that there was no unsettled question of law to discuss; but only questions of fact.

These questions of fact this court will not reopen and try for the third time according to its frequent

outgivings. There ought to be an end of litigation, and this court's view is that parties should not be allowed to hope for a successful appeal by reason of mere differences of opinion about a conclusion of fact as between two lower tribunals and this court. There must be manifest a gross mistake. For example, in *Ferber* v. *Ferris*, 145 U. S., 134, the court says:

> The gist of this controversy was the alleged negligence of the receiver in failing to maintain a reasonably safe crossing. This presented mainly a question of fact. Upon the testimony both the master and the circuit court found that there was no negligence, and while such determination is not conclusive, it is very persuasive in this court. In *Crawford* v. *Neal* (144 U. S., 585, 596) it was said:
>
> The case was referred to a master to take testimony therein, "and to report to this court his findings of fact and his conclusions of law thereon." This he did, and the court, after a review of the evidence, concurred in his finding and conclusions. Clearly, then, they are to be taken as presumptively correct, and unless some obvious error has intervened in the application of the law or some serious or important mistake has been made in the consideration of the evidence, the decree should be permitted to stand. *Tilghman* v. *Proctor* (125 U. S., 136); *Kimberly* v. *Arms* (129 U. S., 512); *Evans* v. *State Bank* (141 U. S., 107).
>
> That rule compels an affirmance of the decree in this case.

Besides the usual denial that the case was properly decided below, the assignments of error raise no question of law now. They merely allege that certain items of evidence were admitted by the trial court and that the appellate court wrongly affirmed its rulings in admitting them.

This seems to be no ground for reversal here and to have furnished no ground for reversal in the Court of Appeals.

This was an equity case, and not a jury trial. The presumption must be indulged that the trial court did not *base its action* upon improper evidence, even if some of it was "admitted."

As we have said, there is no opinion explanatory of the reasons for the decree of either court.

Even if the evidence were wrongly admitted, nay, even if there were a lack of admissible evidence sufficient to warrant the original decree, it is not clear that this high court should busy itself with such matters. There has been a trial in one court and a hearing on appeal and affirmance in another. Possibly both are wrong, but must there not be some limit to debates about the mere matters of fact peculiar to this particular case? This high court should not be required to spend its time acting as a *jury* in cases of no general importance.

We deny, however, that the admission of evidence (which is what the assignment alleges to have been affirmed by affirming the decree) is of itself ground for reversal in equity, and deny that affirming the

decree of the trial court can be regarded as passing upon and deciding for the United States the question of the admissibility of each and every of the various items of evidence objected to.

We do not know what the trial court—still less what the appellate court—thought of item a or item f or item g of the evidence.

It is true the trial court denied a motion to strike out the evidence and overruled every objection made to its admission; but it does not follow that its decree was based upon each and every item admitted over objection, or wholly or partly on *any* of the evidence objected to.

That the so-called homesteader did not reside on the land as he pretended that he did is obvious (R., p. 24.) That McCaskill's agent in this transaction knew where his own father did live is obvious. That Defendant McCaskill employed this son, who lived within 4 or 5 miles of his father and had constant dealings with McCaskill about cutting lumber and money matters, and that this and other circumstances made it extremely probable that McCaskill knew where the so-called homesteader had lived for forty years (R., p. 23) and still lives is equally obvious. From all the circumstances the lower courts were convinced that he did know or certainly knew enough to put him upon inquiry, which would suffice to prevent his enjoying the special privileges which a *bona fide* or innocent purchaser can acquire as to some one else's property.

NO NEW QUESTIONS.

It seems to have been solemnly contended in the Court of Appeals that the fraud was not specified. The only answer to that necessary is to suggest the reading of paragraphs 4 and 5 of the bill. Surely anyone who can see any lack of allegations of fraud and falsehood there must be hard to satisfy.

It is surely unnecessary to discuss the general principles concerning the power of equity courts to cancel fraudulent conveyances, as even the cases cited on the other side leave no doubt of such power in a case such as the present is claimed by us to have been.

FRAUD CLEAR AS TO CONTINUOUS RESIDENCE.

The chief fraud relied upon seems to have been that concerning continuous residence on the so-called homestead, and it is clear that the homesteader was living continuously with his family 3 miles away from the so-called homestead; had been living there fifteen or twenty years.

While the president of the defendant company claims not to have known much about the so-called *homestead*, he was a neighbor of the homesteader and his agent was the son of the homesteader; and makes no pretense that he did not know where the homesteader *did* continuously live. He could not live in two places at the same time. The president of the company (McCaskill) and the homesteader testify that the latter did a great deal of business (R., p. 41) with the company in cypress logs, and homesteader says McCaskill sent him money when-

ever he asked for it. (R., pp. 26–27.) In that agricultural and sparsely settled country, the trial court well knew that neighbors, one a farmer doing constant business with each other and one employing the son of the other, could not be ignorant of each other's place of "continuous residence," saying nothing of the fact that this son knew where his father lived and was the agent of the company or McCaskill in the very business in question, as well as in other matters. The lands were in the same county with Pensacola, and the McCaskill Company had its headquarters at Pensacola, and that is where the trial court sat. Pensacola is a small town, and a court sitting there would be bound, as Sir William Scott expressed it, "not to shut its eyes to what is passing in the world." In a small way, the residences of farmers of such a neighborhood are part of the geography of the region.

It is largely because the trial court is familiar with the local coloring and perspective of a case (and so is not dealing with mere technical abstractions) that makes a higher court at a distance hesitate to disturb its conclusions of fact.

FRAUD AND COLLUSION WERE SUFFICIENTLY ESTABLISHED.

That there was a lack of frankness on the part of the homesteader and McCaskill (R., pp. 52, 39, etc.) and a willingness on the part of the former to state plain falsehoods (R., pp. 66, 50, 31, etc.) is evident, and warranted the trial court in drawing unfavorable inferences from the clearly established collusion and deception and other unquestionably proven facts.

EVIDENCE OBJECTED TO WAS ADMISSIBLE.

The testimony objected to was admissible as contradicting Wm. J. Ward and J. J. McCaskill, and for additional reasons it was proper to show the other similar transactions and systematic course of proceeding by McCaskill set forth on pp. 42–48, 75–107. In this way the nature of the transaction in question could properly be explained.

We submit that from no point of view is there error shown and moreover that this court could reach no other conclusion from the facts proven by evidence now here and beyond doubt properly in the case than was reached by the trial court; and that the decision of the lower court should be affirmed.

Respectfully submitted.

CHARLES W. RUSSELL,
Assistant Attorney-General.

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J. J. McCASKILL COMPANY *v.* UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 103. Argued January 25, 1910.—Decided February 28, 1910.

In this case it was held that the averments set forth in the bill of fraud and perjury in *ex parte* proceedings before the land office were sufficient to give a court of equity jurisdiction of a suit brought by the United States to cancel a patent.

In this case the testimony sustained the averments of the bill that the patent was obtained by fraud.

The rule that courts will not review decisions of the Land Department on questions of fact or reverse discretion properly exercised does not prevent the courts from setting aside a patent obtained by fraud upon the Department.

The presumption that a corporation is, in law, an entity distinct from its stockholders and officers cannot be carried so far as to enable the corporation to become a means of fraud; and knowledge of fraud on the part of the officers, who are also the principal stockholders and whose interests are identical, is properly to be imputed to the corporation itself.

In this case the testimony of an agent of the General Land Office as to conversations and admissions made by the entryman, with knowledge that he was a government officer seeking the facts as to the settlement of the land, was properly admitted, as was also the report made by such officer who testified as to the facts recited therein.

When testimony is admitted, but is not followed up by other testimony necessary to give it effect, this court will assume that the court below attributed to it no probative strength.

THE facts are stated in the opinion.

Mr. W. W. Flournoy for appellant.

Mr. Assistant Attorney General Russell for the United States.

MR. JUSTICE MCKENNA delivered the opinion of the court.

This suit was brought by the United States to cancel a patent issued to one William Josiah Ward and a deed made by him and his wife to J. J. McCaskill & Company, and by the latter to the J. J. McCaskill Company, the appellant. The allegations of the bill are that the N. ½ of the N. E. ¼, S. W. ¼ of the N. E. ¼, and S. E. ¼ of N. W. ¼ of section 8, township 1 N., 17 W., in the county of Walton, State of Florida, being public lands of the United States, William Josiah Ward, on the eighteenth of September, 1900, filed his application upon them for a homestead in the land office in Gainesville, Fla. That he subsequently commuted the entry by paying the Government price therefor, making proof of settlement, cultivation and improvement for the period of time required by law, and that on January 13, 1903, a cash entry certificate No. 18,026 was issued to him and a patent on the third of June, 1903. It is alleged, with detail of circumstances, that the statement of Ward and the proof presented by him on the hearing for final proof were false, fraudulent and untrue. The allegations will be given later. The bill further alleges that the land embraced in the patent was conveyed by Ward to J. J. McCaskill & Company (the bill as originally filed alleged that the conveyance had been made to the McCaskill Company), a copartnership composed of J. J. McCaskill and E. L. McCaskill, then engaged in the manufacture of lumber at Freeport, Fla. That they afterward incorporated by the corporate name of the J. J. McCaskill Company, with the said J. J. McCaskill as president and Robert E. L. McCaskill as secretary, owning a large majority of the stock of the corporation, with the entire manage-

ment and control of its business and affairs. That the company took over from the said J. J. McCaskill or J. J. McCaskill & Company the homestead entry of Ward, with full knowledge of its president and secretary of the negotiations between the company and the entryman by Warren Ward, an agent of the company, "and with all the knowledge and notice of the said McCaskill & Company of the fraud and duplicity practiced by William Josiah Ward in obtaining the patent from the United States."

The answer of the company alleged that conveyance was made by William Josiah Ward to J. J. McCaskill after the patent was issued for the sum of four hundred and twenty-five dollars; that McCaskill, for a valuable consideration, sold and conveyed the same to the McCaskill Company; that the conveyance was made in good faith, without notice or knowledge of any kind whatsoever of any irregularity or fraud upon the part of Ward, if any there was, and that he was a *bona fide* purchaser of the property; and that the company was a *bona fide* purchaser, for a valuable consideration from J. J. McCaskill, and without knowledge or notice of any irregularity or fraud practised by Ward. The usual replication was filed and an examiner was appointed to take the proofs on the issues made.

Upon report to the court a decree was entered overruling the objections of the company to the evidence and the motion to strike it out, and adjudged and decreed that the patent be declared null and void, and that it be surrendered by the company, the decree finding it to be in its possession, to the clerk of the court, to be inscribed by him "null and void." It was further adjudged and decreed that the deed from William Josiah Ward to J. J. McCaskill & Company and the deed from the latter to the J. J. McCaskill Company be vacated and annulled, and the company be enjoined forever from setting up or claiming title to the land by reason of the patent or any of the conveyances from Ward. The decree was affirmed by the Circuit Court of Appeals.

There are twenty-three assignments of errors, eighteen of which are addressed to rulings on evidence and five attack, in general terms, the decree cancelling the patent and the conveyance by Ward. These five were alone discussed in the oral argument and in the brief on file under the following divisions:

"1. Are the averments of the bill of complaint sufficient to give the court of equity jurisdiction?

"2. Do the facts proved by the Government sustain the averment that the final proof of the entryman was false, fraudulent and untrue?

"3. Will this court review decisions by the land office officials upon questions of fact?

"4. Does the appellant occupy the position of an innocent purchaser and is the Government precluded because of his rights as such?"

1. To support the first proposition it is urged that the bill does not allege the facts upon which the charge of fraud in obtaining the patent was based and therefore "presents no issue for trial and should fail upon demurrer." But there was no demurrer filed to the bill. The only answer to paragraphs four and five (set out below) was that as to the facts of the former the company was not advised; that as to the facts of the latter it had "no knowledge," and denied, therefore, that they were true, and demanded strict proof of them. The first and only explicit objection to the bill for insufficiency is made in the brief filed in this court. But, conceding it covered by the assignments of error discussed by counsel and entertaining it, we think that it is without foundation. The following are its averments:

"Your orator shows unto your honor that the said William Josiah Ward, in the commutation proof taken on the 29th day of December, 1902, alleged himself, and made it appear by the testimony of others, that he had established a residence upon said land on March 10th, 1901, and that he continuously resided thereon from that date until and up to the date of submission of final proof, except for absences on two or three

occasions of not exceeding three months, due to the illness of his wife; that he had improved the tract by erection of a house thereon and by cultivating one-half acre for two seasons, and the whole amount of improvements being alleged to be of the value of forty ($40.00) dollars, and that he had complied with the law entitling him to a patent to said lands.

"Your orator further shows unto the court that the statement of the said Ward and the proof presented by him on the hearing for final proof was false, fraudulent and untrue; that he did not have the improvements that he alleged that he had on said premises, and had not cultivated the said land; that the improvements accomplished on said entry consisted of nothing more than a pine-pole cabin, never completed, without floor, door or chimney; that there was absolutely no means of entrance or exit thereto or therefrom, unless through the unenclosed gable ends of said cabin; that the interstices between the poles of said cabin were never closed in any fashion; that the only ground on said entry which had undergone cultivation was a space within an enclosure of thirty by thirty-five feet; that the said Ward never resided upon said land, but during the period allowed for residence on the homestead entry, entryman actually resided at his home, where for a long time he had maintained his residence, three and one-half miles distant from said entry."

Appellant relies for its contention upon *United States* v. *Throckmorton*, 98 U. S. 61; *Vance* v. *Burbank*, 101 U. S. 514; *United States* v. *Maxwell Land Grant*, 121 U. S. 325, and other cases of like kind. We will not take the time to review them. It is enough to say that it was pointed out in *United States* v. *Minor*, 114 U. S. 233, that they do not apply to a case like that at bar, where the charge is that there was fraud and perjury in *ex parte* proceedings before the land office. See also *United States* v. *San Jacinto Tin Company*, 125 U. S. 273; *Moffat* v. *United States*, 112 U. S. 24; *United States* v. *Iron Silver Mining Company*, 128 U. S. 673; *Colorado Coal Company* v. *United States*, 123 U. S. 307; *United States* v. *Beebe*, 127

U. S. 338; *United States* v. *Budd*, 154 U. S. 15; *United States* v. *American Bell Company*, 167 U. S. 224.

2. This division involves the sufficiency of the evidence to sustain the decree. The argument at bar has not kept this division separate from the first or the first from it. They are manifestly different. The first concerns the sufficiency of the bill, this the sufficiency of the evidence. In other words, whether the evidence has established the averments of the bill, assuming them to be sufficiently specific, by clear and satisfactory proof. And it may be conceded that that is the degree of proof that the cases require. It was said in *United States* v. *Maxwell Land Grant*, *supra*, "that when a court of equity is asked to set aside a patent for fraud or mistake, the testimony on which this is done must be clear, unequivocal and convincing, and cannot be done upon a bare preponderance of evidence which leaves the issue in doubt."

Does the case at bar fill the measure of proof required by the cases? In this inquiry we start with the finding of the two lower courts in the affirmative. Appellant attacks the finding, but, as we have said, does not keep the discussion of this inquiry separate from the consideration of the sufficiency of the bill. In both stress is put upon the same proposition. It is contended that the allegations of the bill that the proofs submitted by Ward to the land office were fraudulent and untrue was a mere legal conclusion, and that besides it was solely the province of the land office officials to determine such matter, and "thus may, in their discretion, issue patents to persons upon evidence of improvement and cultivation of greater or less value and extent, the extent in value of the improvement being solely in their discretion." It is further argued that "the statutes governing the disposition of the public lands required neither a limited amount of improvement nor an absolute continuous residence," and "that when an entryman has clearly set forth the amount of the improvements, however small, and the department has issued a patent thereupon, then the question of the amount, or extent, is for-

ever put at rest." The purpose of the law, it is further argued, "is to give a part of the public domain to the poor man, and that therefore temporary abandonment, for the purpose of earning a livelihood or support his family, or to secure funds with which to make improvements, or on account of sickness, as in the case at bar, is permissible." The value and amount of improvement, it is finally urged, is immaterial except to detract from the good faith of the entryman, "and then only when accompanied with evidence of the ability of the entryman to make more improvements than in fact were made." These tests may be accepted, *arguendo*, and the fraud of Ward is established.

The averment of the bill is that he deceived the land office by false testimony of the extent of his improvements, cultivation and residence, and secured his patent by that deception. In other words, that the judgment and discretion of the land office were invoked, not upon the actual extent of his improvements, cultivation and residence, but upon a misrepresentation of their extent. See *United States* v. *Minor*, *supra*.

It may be well here to consider what the law requires. It gives the right of entry of 160 acres of land as a homestead, upon the condition, however, which must be established by affidavit, that the "application is honestly and in good faith made for the purpose of actual settlement and cultivation and not for the benefit of any other person." That applicant will honestly endeavor to comply with the requirements of settlement and cultivation, and does not apply to enter the same for the purpose of speculation. The purpose of the law, therefore, is to give a *home*, and to secure the gift the applicant must show that he has made the land a home. Five years of residence and cultivation for the term of five years he must show by two credible witnesses.

Residence and cultivation of the land are the price that is exacted for its payment. It is in the power of the settler to modify the terms somewhat. He may substitute for a residence and cultivation for five years a residence and cultiva-

tion for not less than fourteen months, but he must make "proof of settlement and of residence and cultivation for such period of fourteen months," and pay the price provided by law for the land entered. This is known as the "commutation" of his homestead entry.

In view of these provisions of law we may judge of what Ward did. He entered the land as a homestead, and on the eighth of September, 1900, filed the affidavit required, stating that he made his application honestly and in good faith, for the purpose of actual cultivation and settlement, and not for the benefit of any other person. On the twenty-ninth of December, 1902, he produced two witnesses to establish his residence, cultivation and character of his improvements, one of whom testified that he was well acquainted with Ward and the land embraced in Ward's claim; that it was "low piney woods land, very wet in rainy seasons." His testimony as to Ward's residence and cultivation of the land is best exhibited by the following questions and answers:

"Q. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

"A. About the 9th of March, 1901.

* * * * * * * *

"Q. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon?

"A. I don't think they have continuously. I have seen them absent from it a time or two.

"Q. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and, if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

"A. I have known of their being absent a time or two, but he has not been off of it over three months at the longest period. His wife is very feeble, and the land is so low and wet that, on account of her health as well as to make a support, he was compelled to be absent. I presume he has been on it nearly every week."

The other witness was even more definite. Answering a question as to the continuity of the residence of Ward and his family on the land, he said that he could not say "whether continuous or not, have not been there all the time, they were there every time I have been there, but on one or two occasions have seen them off the land." And further, as to the absence of Ward and his family, he said: "I don't know exactly how long, but am satisfied they have not been absent over six months at the longest for the purpose of making a support, and on account of the land being so low and wet and unfit for cultivation." Both witnesses gave the extent of cultivation to be one-half acre for two years and the improvement to consist of a house and garden of the value of forty or fifty dollars.

Ward himself testified that he established his residence on the tenth of March, 1901, and that his improvement consisted of a small dwelling house and a garden of about one-half acre of land, worth about forty dollars. He testified further as follows:

"Q. 5. Of whom does your family consist; and have you and your family resided continuously on the land since first establishing residence thereon?

"A. Myself and wife. No, not continuously; that is, not every day and night.

* * * * * * * *

"Q. 6. For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and, if temporarily absent, did your family reside upon and cultivate the land during such absence?

"A. Was absent two or three times, not over three months at longest period, on account of my wife's health. She is very feeble, and the land is so low and wet, that it was impossible to keep her on the place all the time."

And he further testified that he had not sold, conveyed or mortgaged any portion of the land. This testimony would have established, if true, that Ward with his family took up

his residence on the land on the tenth of March, 1901, that his improvement consisted of a small dwelling house, fit for habitation, and a garden of one-half acre, cultivated two seasons, and that after making his settlement he was absent only "two or three times, not over three months," at longest, "on account of his (witness') health." This was the testimony upon which the land department acted. What is the evidence in this case? His two sons never saw him on the land, but always saw him at his residence, four or five miles from the land. He testifies himself that he never moved his family there; that the house was built of pine poles, was twelve by fourteen in dimensions, had no floor, no chimney, no "ceiling or boards on between the poles or the interstices;" that he fenced and cultivated "a small piece, not larger then the house," and this was enclosed by rails and poles and planted two years. His residence upon the land is described in the following questions and answers:

"Q. Did you ever have your family there on any night? Ever spend any night with your family there?

"A. I stayed there at night myself. My wife did not go there. She was very sickly.

"Q. About how many nights in the week did you spend there?

"A. I do not think I stayed in the same week more than one night in the week."

And there is other testimony showing that the house was unfit for habitation. A special agent of the General Land Office inspected the place. He found, he said, "a little pole cabin, 11x13, not completed, and there was no door to go in and out of. There was no window, no chimney, the openings between the poles were not closed, the gable ends were not closed." He further testified that there was no evidence of any residence or habitation there at all. And further, "there was a little enclosure, 30x35 feet, a little amount that was about a quarter of a mile from the house." This witness also testified to the conversation with Ward, in which the latter told